TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. 9[illegible]

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT EXHIBITS.

FILED FEBRUARY [illegible], 1913.

(23,064)

THE UNITED STATES

v.

STANDARD SANITARY MANUFACTURING COMPANY, AND OTHERS.

RECORD—VOLUME II.

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PETITIONER'S EXHIBIT No. 1.

Filed Oct. 31, 1910.

THE SANITARY ENAMELED WARE ASSOCIATION

Offices
1509 Arrott Bldg.
Pittsburg

E. L. Wayman, Commissioner.

Officers.

D. A. Carpenter, Pres. Mansfield, O.
A. H. Cline, Jr. Treas. Pittsburgh, Pa.
H. M. Hoelscher, Sec'y. Chicago, Ill.

Ex Officio Members of Board of Directors.

Directors.

Walter J. Kohler, Chairman	Sheboygan, Wis.	Elected for a term of two years.
Francis J. Torrance, Vice-Chairman	Pittsburg, Pa.	
L. C. Huesmann,	Indianapolis, Ind.	
J. A. Kelly,	Pittsburgh, Pa.	Elected for a term of one yr.
Anton Weiskittel,	Baltimore, Md.	

Members		*Representatives*
Blairsville Enameled Ware Co.	Blairsville, Pa.	Mr. F. D. Cook,
Barnes Mfg. Co., The	Mansfield, Ohio.	" T. R. Barnes
Cahill Iron Works, The	Chattanooga, Tenn.	" F. H. Caldwell
Clymer Mfg. Co.,	Indiana, Pa.	" U. A. Guthrie
Colwell Lead Company,	New York,	" J. T. Duryea.
Day-Ward Co., The	Warren, Ohio.	" A. G. Ward,
Humphryes Mfg. Co., The	Mansfield, O.	" D. A. Carpenter
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.	" J. A. Kelly
Kohler Sons Co., J. M.	Sheboygan, Wis.	" W. J. Kohler
Mott Iron Works, J. L.	New York,	" E. Hammann,
McVay & Walker,	Braddock, Pa.	" Alex C. Walker
McCrum-Howell Co.	New York City.	" H. T. Gates
National Sanitary Mfg. Co.	Salem, Ohio.	" F. G. Borden,
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	" F. J. Torrence,
Union Sanitary Mfg. Co.	Noblesville, Ind.	" L. C. Huesmann
United States Sanitary Mfg. Co.,	Pittsburgh, Pa.	" A. H. Cline, Jr.
Wolff Mfg. Co., L.	Chicago, Ill.	" H. M. Hoelscher
Weiskittel & Son, A.	Baltimore, Md.	" A. Weiskittel
Wheeling Enameled Iron Co.	Wheeling, W. Va.	" J. E. Wright

PETITIONER'S EXHIBIT No. 2.

Filed Oct. 31, 1910.

March 30, 1910

Resolved that the matter of License Agreement and Resale Agreement be referred to a Special Committee of five (5); said Committee to be elected at this meeting and to be known as the Price and Schedule Committee, which Committee shall be elected directly should the motion to adopt this Resolution prevail.

This Committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above mentioned Agreements. And when the consent of 85 per cent of the production is had, the Agreements shall become binding and effective.

The Commissioner is authorized to levy a special assessment equal to the amount of one quarter's dues as now paid into the Association.

The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this Convention was called. The undersigned agree to the above conditions, and in so appending their signatures hereby agree to give their prompt cooperation to the matter in question.

Witness the Hands and Seals of the Parties hereto:

The Cahill Iron Works	per F. H. Caldwell, Pres. per E. L. Wayman,
L. Wolff Mfg.	Herman M. Hoelscher, Secy.
The Day Ward Co.	A. G. Ward. V. P.
National Sanitary Co.	F. G. Borden, Pres.
Blairsville Enameled Ware Co.	F. D. Cook, Pres.
A. Weiskittel & Son Co.	Anton Weiskittel
United States Sanitary Mfg. Co.	C. F. Arrott, Prest.
The McCrum-Howell Co.	Howard T. Gates, Secretary
The J. L. Mott Iron Works subject to confirmation or revocation by our General Manager, John Reid	E. Hammann
The Barnes Mfg. Co.	T. R. Barnes, Secy. & Gen. Mgr.

The Humphryes Mfg. Co.	A. I. Laing	1
	by Frank Torrance, V. Pres.	
Standard Sanitary Mfg. Co.		
Union Sanitary Mfg. Co.	by C. E. Gates	
Wheeling Enameled Iron Co.	by J. E. Wright, Pres. per E. L. Wayman.	
Clymer Mfg. Co.	W. A. Guthrie, Pres.	
		2
		3
		4

PETITIONER'S EXHIBIT No. 3.

Filed Oct. 31, 1910.

EDWIN L. WAYMAN
1509 Arrott Bldg.
Pittsburgh

MEMORANDUM OF AGREEMENT.

We hereby agree to execute with E. L. Wayman of the City of Pittsburg, as Licensor, on or before April 15th, 1910, a License Agreement for the Manufacture of Sanitary Enameled Ware under the following United States Letters Patent.

"Various Patents covering Pneumatic Dredgers."
(to be enumerated in detail).

and such additional Patents as may come into his possession, upon the Terms, Conditions, etc., as hereinafter stated or provided for:—

1. The License Agreement to cover the following Schedules of Enameled Ware.

   Schedule 1. 5 Year Guaranteed Baths.
   " 2. 2 " " "
   " 3. All other Grades of Baths.
   " 4. Small Ware, Lavatories, etc. and R.R. sinks
   " 5. Flat Rim Sinks.
   " 6. Competitive Lavatories 552 to 562 Inclusive 565 and 535.

2. The amount of Royalty to be as follows:

   $5.00 per day per furnace in operation with a rebate of 90 per cent, beginning with the 1st month of the 2nd Period and monthly thereafter, if the terms of the License have been complied with.

3. For each violation of the Price Regulations of the License Agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The Selling Prices to the Jobbers to be established through the Licensor by a Price Committee appointed by the various manufacturers.

5. The Resale Prices to the Jobber, taking into consideration the rebate for observance of Buying and Selling Regulations, shall be figured as follows: 1

High Grade Goods	25% above Jobbers cost.
Competition Goods	16 2/3% above Jobbers cost.

6. The Rebates to Jobbers shall be as follows:

10%, payable at end of Period for strict observance of agreements, the details of the manner in which the rebate shall be made, to be determined.

7. The length of the Rebate Periods shall be 3 months beginning April 15th, 1910, with the exception of the first period, which shall end July 1st. 2

8. The License Agreement and Resale Prices shall become effective April 15h, and the agreement to be executed between the Manufacturers and Jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the Resale Prices that may be established.

9. The details of Contract Forms between the Manufacturers and the Licensor shall be drawn up by the Licensor and submitted for approval at the next Special Meeting to be held in New York City. 3

10. The Licensor will also submit the same covering Agreement between Manufacturers and Jobbers.

11. The following "Preferential Discounts" from the selling Prices established by the Licensor will be allowed the various Manufacturers *on Sales to Jobbers only.*

Schedule 1—5 year Guaranteed Baths. 4
" 2—2 " " "
" 3—All other Grades of Baths.
" 4—Small Ware—Lavatories, etc. & RR Sinks.
" 5—Sinks, flat rim.
" 6—Competitive lavatories 552-562 Inclusive 565 and 535.

SCHEDULES.

Manufacturers	1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphryes	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

12. The Length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various Manufacturers.

Signed

The McCrum-Howell Co.
Lloyd G. McCrum, Prest.
Blairsville Enameled Ware Co.
A. A. Shipman Treas.
National Sanitary Mfg. Co.
F. G. Borden, Pres.
The Barnes Mfg. Co.
T. R. Barnes, Secy. & Gen. Mgr.
The Humphryes Mfg. Co.
By Reed Carpenter, Treas.
Wheeling Enameled Iron Co.
J. E. Wright, Prest.
Standard Sanitary Mfg. Co.
By Francis J. Torrance, V. Pres.
L. Wolff Mfg. Co.
Herman M. Hoelscher, Secy.
United States Sanitary Mfg. Co.
By A. H. Cline, Jr. Secy.
Anton Weiskittel & Son Co.
By Anton Weiskittel
Union Sanitary Mfg. Co.
per C. E. Gates,
2nd V. P. & Gen. Mgr.

PETITIONER'S EXHIBIT No. 4. 1

Filed Oct. 31, 1910.

Tel. address 2100 Bryant

Cable or Marconi address
Muschenheim, New York

Hotel Astor,
Times Square,
New York.

Wm. C. Muschenheim

Whereas: A proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade, and whereas long-time contracts are a menace to such proposition, We, the undersigned mfr. of En. Ware hereby agree to take no orders for delivery beyond May 31st, 1910, this agreement is not binding upon the signers unless all members of the Enam. Ware mfgrs. are parties thereto and append their signatures. 2

The within is agreed to.

Union Sanitary Mfg. Co. By C. E. Gates
L. Wolff Mfg. Co. Herman M. Hoelscher, Secy.
The Day Ward Co. By A. E. Ward & Co. 3
The United States Sanitary Mfg. Co. A. H. Cline Jr. Secy.
The Cahill Iron Works By F. H. Caldwell, Prest.
Blairsville Enameled Ware Co. F. D. Cook, Prest.
A. Weiskittel & Son Co. Anton Weiskittel
The McCrum-Howell Co. Howard T. Gates, Secretary
The Barnes Mfg. Co. T. R. Barnes, Secy. & Gen. Mgr.
The Humphryes Mfg. Co. A. I. Laing
Clymer Mfg. Co. W. A. Guthrie, Pr.
National Sanitary Mfg. Co. F. G. Borden, Pres.
The J. L. Mott Iron Works, E. Hamann
Standard Sanitary Mfg. Co. by Franc J. Torrance, V. P. 4
Wheeling Enameled Iron Co. by J. E. Wright—per E. L. Wayman.
Kerner Mfg. Co. J. A. Frauenheim, Prest.

PETITIONER'S EXHIBIT No. 5.

Filed Oct. 31, 1910.

AGREEMENT.

THIS AGREEMENT made this *4th* day of *May*, 1910, by and between Edwin L. Wayman, of Pittsburg, Allegheny County, Pennsylvania, party of the first part, and the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Pittsburg, in said County and State, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to patent No. 633,941 to James Arrott, dates September 26th, 1899, for Dredger for Pulverulent Material:

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said Letters Patent and inventions:

NOW THEREFORE, be it known that the parties have agreed as follows:

FIRST. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said Letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the part of the party of the first part.

SECOND—The party of the first part, for and in consideration of the said assignment, agrees that the party of the second part shall, at the expiration of *two* years from the date hereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment, that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has affixed his hand and seal the day and year first above written, and the party of the second part has caused these

presents to be executed by its Vice President, and attested by its Secretary. 1

EDWIN L. WAYMAN
L. S. [SEAL.]
STANDARD SANITARY MFG CO
By FRANCIS J. TORRANCE.
Vice President.

[SEAL.] Standard Sanitary
Manufacturing Co. 1899.

Attest:
W. A. Myler.
Secretary. 2

3

4

PETITIONER'S EXHIBIT No. 6.

Filed Oct. 31, 1910.

ASSIGNMENT.

WHEREAS, the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, and having a place of business at Pittsburgh, Pennsylvania, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
633,941	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent Material.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, in said County and State, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby;

NOW, THEREFORE, be it known, that for and in consideration of the sum of *Ten Thousand Dollars ($10,000.00)* by the said Edwin L. Wayman in hand paid the receipt of which is hereby acknowledged, the STANDARD SANITARY MFG. CO. aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by the said, STANDARD SANITARY MFG. CO. had this sale and assignment not been made.

IN WITNESS WHEREOF, the STANDARD SANITARY MFG. CO. has caused these presents to be signed by its Vice President and attested by its Secretary, this *fourth* day of *May*, 1910.

STANDARD SANITARY MFG. CO.
By FRANCIS J. TORRANCE,
Vice President.

[SEAL.] Standard Sanitary
Manufacturing Co., 1899.

Attest:
W. A. Myler.
Secretary.

Allegheny County, ss. 1

Before me, a Notary Public for said County, personally appeared Francis J. Torrance, known to me to be the Vice President of the STANDARD SANITARY MFG. CO., and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal May 4th, 1910.

AGNES C. WAY
Notary Public.

My commission Expires January 16th, 1913.

2

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

(Patent Office
[SEAL.] United States
of America)

RECEIVED AND RECORDED on the 2nd day of June 1910, in Liber X, 84, page 61, of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

E. B. MOORE, 3
Commissioner of Patents.

EXD./E.H.G.

4

GOVERNMENT'S EXHIBIT 7.

PETITIONER'S EXHIBIT No. 7.

Filed Oct. 31, 1910.

Section—2—Minutes

Dated Feb. 5th, 1910.

Third Regular Meeting
of the Members of the

SANITARY ENAMELED WARE ASSOCIATION

Feb. 1st, 1910.
at Pittsburgh.

Present

Members	*Representatives*	
Blairsville Enameled Ware Co.	299 Broadway, N. Y.	Mr. A. W. Shipman.
		" F. D. Cook
Barnes Mfg. Co.	Mansfield, Ohio.	" T. R. Barnes.
Clymer Mfg. Co.	Indiana, Pa.	" W. A. Guthrie
Day-Ward Co.	Warren, Ohio.	" A. G. Ward.
Humphryes Mfg. Co.	Mansfield, O.	" H. D. Kenney
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.	" J. A. Kelly
J. M. Kohler Sons Co.	Sheboygan, Wis.	" W. J. Kohler
Mott Iron Works, The J. L.	New York City.	" Ed. Hammann
McCrum-Howell Co.	New York City.	" H. T. Gates.
National Sanitary Mfg. Co.	Salem, Ohio.	" F. G. Borden
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	" W. A. Myler
Union Sanitary Mfg. Co.	Noblesville, Ind.	" C. E. Gates
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.	" A. H. Cline, Jr.
Wolff Mfg. Co.	Chicago, Ill.	" H. M. Hoelscher
Weiskittel & Son Co.	Baltimore, Md.	" A. Weiskittel

* * * * * * * *

The Commissioner called attention to a request from the New York Jobbers that the Manufacturers meet their Committee to confer on the subject of Resale Prices and the recognition only of Blue List Jobbers. It was the sense of the Meeting that the Commissioner advise them to the effect that the Manufacturers would be pleased to meet their Committee just as soon as their own plans on this subject were in more complete form and that considerable progress in this direction had been made.

There being no further business, the Meeting adjourned.

PETITIONER'S EXHIBIT No. 8. 1

Filed Oct. 31 1910.

SAMPLE COPY OF PROPOSED FORM LICENSE AGREEMENT.

THIS AGREEMENT, Made in duplicate this ..... day of ....., 191.., between Edwin L. Wayman, a resident of the City of Pittsburgh, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part and.....
.....
a corporation duly organized and existing under and by 2
virtue of the laws of the State of.....(hereinafter called the "Licensee"), party of the second part.

WITNESSETH:

THAT WHEREAS, the said Wayman owns or controls or has the right to grant licenses under certain Letters Patent pertaining to the manufacture of Sanitary Iron Enameled Ware, enumerated in "Schedule of Patents," hereto annexed, and

WHEREAS, the Licensee is desirous of acquiring a License under said Letters Patent of the character and upon the 3
terms and conditions herein set forth;

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive License to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell 4
goods so made; the said License being non-assignable and non-transferable except to successors to substantially the entire good-will and business of the Licensee, and this License shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of Sanitary Iron Enameled Ware.

CLAIMS. 2. The Licensor hereby agrees to suspend his claims against the Licensee and its cus-

1 tomers or patrons for damages or profits which he may be entitled to receive for any claims for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

3. So long as the Licensee operates under this License or any renewal thereof and keeps and performs all of the obligations of said License herein contained, the Licensor agrees not to bring action against said Licen-
2 see because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof.

ROYALTIES

4. For the use of the various patents enumerated in "Schedule of Patents," hereto
3 annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to Five ($5.00) Dollars per day for each furnace in operation during the preceding month.

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered
4 as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive days, the Licensee shall be entitled to a diminution of his License payment at the rate of Five ($5.00) Dollars per day for the number of days shut down.

In order to determine the amount of

actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee, assignated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which these furnaces have been operating consistent with the provisions of the foregoing Section of this License. 1 2

PREFERENTIAL DISCOUNTS.

5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to Jobbers only the following additional discounts from the regular selling prices to the Jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the Jobber. 3

6. All terms, conditions, regulations and prices now established by the Licensor and set forth in schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted therefor by the Licensor, which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations, prices and preferential discounts as may be established by the Licensor from time to time. 4

1 ROYALTY REBATES.

7. If at the end of the fourth month of the first year (said year beginning.....), it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said License for said first months' royalties, to wit.....% of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said License, if it shall appear 2 that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shaall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates 3 and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

Penalties shall be deducted from all unpaid rebates as follows:

1. For violation of Price Regulations: An amount equal to the selling value of the shipment or shipments in question. By words "Price Regulations," hereinbefore mentioned, is meant any rules or reg- 4 ulations which cover list or net prices at which the goods covered by this License may be sold, the preferential discounts and the terms of sale.

2. In case of Forfeiture of License: The entire amount of unpaid rebates.

EXPORT.

10. The restrictions herein contained as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. 1

11. The books of the Licensee shall be open to inspection, at all reasonable times, by the Licensor or by an accountant appointed by the Licensor.

VALIDITY OF PATENTS.

12. The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only and it is further agreed that upon the termination of this agreement and License for any cause, the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that he will, upon the written request of at least three-quarters in number of the Licensees at any time holding Licenses similar to this License, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and License from all non-licensed parties using any of said machines, processes or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar License. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this License shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 2 3 4

PROTECTION OF LICENSEE.

LABELS.

13. No goods manufactured under this License shall be sold unless they bear a registered label owned by the Licensee and in addition thereto a License tag or label approved by the Licensor which License tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of.....years from the date hereof, unless previously terminated as herein provided.

15. This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

SCHEDULE OF PATENTS.

Pat. No.	Date.	Inventor	Title.
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverent material.
924,491	June 8, 1909	Charles B. Nesbit	Dredger for Pulverent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor
533,062	Jan. 29, 1895	Herman M. Hoelscher	Flushing Rim Slop Sink
838,702	Dec. 18, 1906	Anthony A. Ficener	Sink Attachment
541,068	June 18, 1895	John Clifford and Peter Louis Sutter	Bath Tub, etc.
34,976	Aug. 20, 1901	Almon G. Ward and George E. Day.	Design for a bath tub leg
684,797	Oct. 22, 1901	Almon G. Ward and George E. Day	Bath tub leg
33,465	Oct. 30, 1900	John H. Gavin	Design for a drain board for Sinks.
540,235	June 4, 1895	John Clifford and John H. Gavin	Multiple combined wash bowl and slab

645,517	March 13, 1900	Christian A. Sievert,	Enameling Table
645,393	March 13, 1900	Edward C. Hoelscher and John Clifford	Enameling Table or Machine
684,888	Oct. 22, 1901	Almon G. Ward	Bath tub leg
942,380	Dec. 7, 1909	Geo. W. Franzheim	Leg Fastening
945,457	Jan. 4, 1910	Thomas R. Barnes	Sink Strainer
846,022	March 5, 1907	Thomas R. Barnes	Concealed Hanger

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

1 **PETITIONER'S EXHIBIT No. 9.**

Filed Oct. 31, 1910.

LICENSE AGREEMENT

THIS AGREEMENT, Made in duplicate this ..... day of .....191.., between Edwin L. Wayman, a resident of the City of Pittsburgh, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and .....
.....
a corporation duly organized and existing under and by vir-
2 tue of the laws of the State of.....
(hereinafter called the "Licensee"), party of the second part.

WITNESSETH:

THAT WHEREAS, the said Wayman owns or controls or has the right to grant licenses under certain Letters Patent pertaining to the manufacture of Sanitary Enameled Iron Ware, enumerated in "Schedule of Patents," hereto annexed, and

WHEREAS, The Licensee is desirous of acquiring a License under said Letters Patent of the character and upon the terms and conditions herein set forth;

3 NOW, THERFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive License to practice in the manufacture of Sanitary Enameled Iron Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell goods so made; the said License being non-assignable and non-
4 transferable except to successors to substantially the entire good-will and business of the Licensee, and this License shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of Sanitary Enameled Iron Ware.

CLAIMS. 2. The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits

which he may be entitled to receive for any claims for any past infringement of said Letters Patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract. 1

3. So long as the Licensee operates under this License or any renewal thereof and keeps and performs all of the obligations of said License herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof. 2

ROYALTIES.

4. For the use of the various patents enumerated in "Schedule of Patents," hereto annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to Five ($5.00) Dollars per day for each furnace in operation during the preceding month. 3

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive working days, the Licensee shall be entitled to a diminution of his License payment at the rate of Five ($5.00) Dollars per working day for the number of days shut down. 4

In order to determine the amount of

actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee, designated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which such furnaces have been operating consistent with the provisions of the foregoing Section of this License.

PREFERENTIAL DISCOUNTS.

5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to Jobbers only the following additional discounts from the regular selling prices to the Jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the Jobber.

	Discounts.
Schedule No. 1. 5 year guaranteed Baths and Receptors	
Schedule No. 2. 2 year guaranteed Baths	
Schedule No. 3. All other Grades of Baths	
Schedule No. 4. Small Wares Lavatories, etc.....	
Exceptions:	
Lavatories, similar to Plate Nos. (Standard) P-558, 559, 561 and 562	

Schedule No. 4½. Roll Rim Sinks, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Urinals and Urinal Ranges, Closet Bowls and Closet Ranges, Hoppers, Hopper and Trap Combinations, Hopper Trays and Laundry Trays 2

Schedule No. 5. Sinks, Flat Rim Square and Round-cornered, Kitchen, Half-Circle and Flat Rim Sink Combinations ....

Schedule No. 6. Closet Tanks, High and Low Pattern... .....

PRICES.

6. The Licensor agrees that he will employ a commission of six (6) persons, of which he is to be one and to act as Chairman thereof, five of whom shall be designated by a majority of the parties holding Licenses similar to this License, which Commission shall have supervision of all the relations and transactions between the parties hereto under this agreement, but it is understood that where a member of said Commission, or his Company, shall be directly interested in any question of a violation of the License to be decided by the said Commission, said member shall be disqualified and a temporary member shall be appointed in his place by the remaining members of the Commission.

All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain

in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed. Notice of such changes and substitutions shall be given from time to time in writing by the Licensor to the Licensees. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and preferential discounts as may be established by the Licensor from time to time, and the Licensee further agrees to sell no "Seconds" or "Bs" covered by Schedules 4, 4½, 5 and 6.

ROYALTY REBATES.

7. If at the end of the fourth month of the first year (said year beginning June 1st, 1910) it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said License for said first month's royalties, to wit: 80% of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect to the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect.

EXPORT.

10. The restrictions herein contained as to the prices at which Sanitary Enameled Iron Ware is to be sold shall not apply to Sanitary Enameled Iron Ware also and exported to foreign countries. Such sales must be proved bona fide to the Licensor. 1

11. The books of the Licensee shall be open to inspection, at all reasonable times, by the Licensor, by an accountant appointed by the Licensor, not associated in any manner with any of the Licensees or Jobbers. 2

VALIDITY OF PATENTS.

12. The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and License for any cause, the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that he will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to 3 this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and License from all non-licensed parties using any of said machines, processes or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar License. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or 4 users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this License shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them.

1 LABELS.

13. No goods manufactured under this License shall be sold unless they bear a registered label (except where otherwise specified) owned by the Licensee and in addition thereto a License tag or label approved by the Licensor, which License tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force

2 for a period of two years from the date hereof, unless previously terminated as herein provided.

15. This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

3

SCHEDULE OF PATENTS.

Pat. No.	Date	Inventor	Title
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverulent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor

4

PETITIONER'S EXHIBIT No. 10.

Filed Oct. 31, 1910.

SAMPLE COPY OF PROPOSED FORM JOBBER'S AGREEMENT.

THIS AGREEMENT, Made this.....day of..... 19.., between the.....a corporation (hereinafter called the Company) and....., State of ....., hereinafter called the (Purchaser);

WITNESSETH: Whereas the Company is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

SCHEDULE OF PATENTS.

Pat. No.	Date	Inventor	Title.
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverent material
924,491	June 8, 1909	Charles B. Nesbit	Dredger for pulverent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor
533,062	Jan. 29, 1895	Herman M. Hoelscher	Flushing Rim Slop Sink
838,702	Dec. 18, 1906	Anthony A. Ficener	Sink attachment
541,068	June 18, 1895	John Clifford and Peter Louis Sutter	Bath Tub, etc.
34,976	Aug. 20, 1901	Almon G. Ward and George E. Day,	Design for a bath tub leg
684,798	Oct. 22, 1901	Almon G. Ward and George E. Day	Bath tub leg
33,465	Oct. 30, 1900	John H. Gavin	Design for a drain board for Sinks
540,235	June 4, 1895	John Clifford and John H. Gavin	Multiple combined wash bowl and slab
645,517	March 13, 1900	Christian A. Sievert	Enameling Table
645,393	March 13, 1900	Edward C. Hoelscher and John Clifford	Enameling Table or Machine
684,888	Oct. 22, 1901	Almon G. Ward	Bath tub leg
942,380	Dec. 7, 1909	Geo. W. Franzheim	Leg fastening
945,457	Jan. 4, 1910	Thomas R. Barnes	Sink Strainer
846,022	March 5, 1907	Thomas R. Barnes	Concealed Hanger

AND WHEREAS, the Purchaser desires to purchase from the Company Sanitary Enameled Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such Ware to others, and the Company is willing to sell Sanitary Enameled Ware to the Purchaser, and to license them for resale on the following terms and conditions:

NOW, THEREFORE:

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time ending June 30th, 1910,..... .....Sanitary Enameled Ware at the following discounts from the prices given in the various Schedules: (Insert Label.)

Schedule	Articles	Discounts from resale prices Established by the Licensor.
1.	5 year guaranteed baths.....	10%
2.	2 year guaranteed baths.....	10%
3.	All other grades of baths.....	5%
4.	Small Ware-Lavatories, etc., and Rolled Rim Sinks.....	10%
5.	Flat Rim Sinks.....	5%
6.	Competitive Lavatories	5%

TERMS: Net 60 days or 2% for cash 10 days.

DELIVERIES.

2. Goods will be sold to the Purchaser, F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of 200 pounds and over to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of your being charged and paying freight from the nearest city named.

Goods shall be re-sold by the Purchaser at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

Purchaser will be allowed car load prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points, other than manu-

facturing points, car load or less car load prices will apply according to quantity, as established in the Price Sheets. 1

GENERAL CONDITIONS.

3. Prices or other regulations are effective the morning of the date appearing on the sheet.

4. The ware covered by the Price Sheets shall be invoiced by individual items, and it is not permissible to bill collectively several articles in a "Lump Sum."

5. The various conditions respecting "Guarantee" under which the ware is purchased by the jobber, shall not be varied in the resale to the plumber. 2

6. The restrictions herein contained as to the prices at which Enameled Ware is to be purchased and sold, shall not apply to Enameled Ware sold and exported to Foreign Countries.

REBATES.

7. If your purchases of material, less returned goods, covered by the various Schedules from the following Manufacturers licensed under the patents enumerated hereinbefore:— 3

Blairsville Enameled Ware Co.	Blairsville, Pa.
Barnes Manufacturing Company, The	Mansfield, O.
Cahill Iron Works, The	Chattanooga, Tenn.
Clymer Mfg. Co.	Indiana, Pa.
Colwell Lead Co.	New York
Day-Ward Co., The	Warren, O.
Humphreys Mfg. Co., The	Mansfield, O.
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.
Kohler Sons Co., J. M.	Sheboygan, Wis.
Mott Iron Works, The J. L.	New York City
McVay & Walker	Braddock, Pa. 4
McCrum-Howell Co.	New York City
National Sanitary Mfg. Co.	Salem, O.
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.
Wolff Mfg. Co., L.	Chicago, Ill.
Weiskittel & Son, A.	Baltimore, Md.
Wheeling Enameled Iron Co.	Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with, we will pay you rebates set on such purchases as you have made from us, as follows:

$.....5%
.....7½%
.....10%
.....10 and 2½%

Rebates are payable only at the expiration of the period ending June 30th, 1910, and after claims have been approved by E. L. Wayman, Licensor, 1509 Arrott Building, Pittsburgh, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, Licensor, upon standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within 30 days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the Licensor named above.

8. The Purchaser understands that the re-sale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Ware Manufacturers and by all Jobbers and Dealers. The purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the Price Sheets and furnished as a part of this agreement, or as they may be embodied in the Price Sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time; but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

9. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission

of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at re-sale prices, without any discount or rebate whatever. 1

10. As an added consideration for this agreement whereby the Purchaser is to be sold goods manufactured under the patents hereinbefore named, the said Purchaser hereby agrees that as to all goods, wares and merchandise, which are manufactured under and in accordance with the patents hereinbefore named, he will only resell such goods now on hand, or already purchased by him, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 8 hereof. 2

11. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the Sales Manager or his duly authorized representative located in the main sales office of the Company. 3

.....

Accepted this ..... (Purchaser)
day of 19

..... (Company)

By.....

4

1 PETITIONER'S EXHIBIT No. 11.

Filed Oct. 31, 1910.

NOTE.—This contract must be executed by the Purchaser in order to purchase Licensed Sanitary Enameled Iron Ware.

JOBBERS LICENSE AGREEMENT

THIS AGREEMENT, Made this.....day of .....
.....190.., between the.....
a corporation (hereinafter called the Company) and.....
2 .....
State of.....(hereinafter called the Purchaser).

WITNESSETH: Whereas the Company is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

SCHEDULE OF PATENTS

Pat. No.	Date	Inventor	Title
3 633,941	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent Material.
949,625	Feb. 15th, 1910	E. Ditheridge	Pneumatic Sieve.
939,918	Nov. 9th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS, the Purchaser desires to purchase from the Company Sanitary Enameled Iron Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such ware to others, and the Company is willing to sell Sanitary Enameled Iron Ware to the Purchaser, and to license it for resale on the following terms and
4 conditions:

NOW, THEREFORE:

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time beginning June 1st, 1910, and ending December 31st, 1910,.....Sanitary Enam-
(Insert label)
eled Iron Ware at the following discounts from the prices given in the various Schedules:

DISCOUNTS AND TERMS

Articles	Discounts from Resale Prices Established by the Licensor. (To be allowed on invoices by the Manufacturer)
Schedule No. 1—5 year Guaranteed Baths, Foot, Pool, Sitz and Child's, and Receptors	7½%
Schedule No. 2—2 year Guaranteed Baths	5 %
Schedule No. 3—All other Grades of Baths	5 %
Schedule No. 4—Small Wares, Drinking Fountains, Lavatories, etc	7½%
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562	5 %
Schedule No. 4½—Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals	5 %
Schedule No. 5—Flat Rim Sinks and Combinations, Square and Round Corner Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps	5 %
Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern	5 %

TERMS: Net 60 days or 2% for cash 10th of month following shipment.

DELIVERIES

2. Goods will be sold to the Purchaser, F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of

1 Union Sanitary Mfg. Co.....Noblesville, Ind.
United States Sanitary Mfg. Co.....Pittsburgh, Pa.
Wolff Mfg. Co., L.....Chicago, Ill.
Weiskittel & Son Co., A.....Baltimore, Md.
Wheeling Enameled Iron Co.....Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with, the Company will pay the Purchaser rebates on such purchases as they have made from the Company during the period ending December 31st, 1910, as follows,

2
$10,000	2½%
$15,000	3 %
$20,000	3½%
$25,000	4 %
$30,000	5 %

Rebates are payable only at the expiration of the period ending December 31st, 1910, and after claims have been approved by E. L. Wayman, Licensor, Arrott Building, Pittsburgh, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, Licensor, upon
3 standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within 30 days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the Licensor named above.

If at the expiration of this contract, a similar contract is made between the parties hereto and the purchases under each contract are sufficiently large so that the aggregate of the purchases under both contracts are double the amounts named above, then the Compaany will pay the percentage rebate named above on the entire amount of such purchases
4 under both contracts, but it shall not be permissible to aggregate purchases made under more than two successive contracts to obtain any greater rebate than may be payable under the last of such two successive contracts.

9. The Purchaser understands that the re-sale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Iron Ware Manufacturers and by all Jobbers and Dealers and

that sales by one Jobber to another cannot be made at any 1
better prices than established in the sheets. The Purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the Price Sheets and furnished as a part of this agreement, or as they may be embodied in the Price Sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time; but in the event of such removal, the purchases to date of 2
such removal will be considered as part of the amount on which rebate is estimated.

10. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Way- 3
man, owner of the Patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he can not thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the Licensed Manufacturers.

11. As an added consideration for this agreement whereby the Purchaser is to be sold goods manufactured under the patents hereinbefore named, the Purchaser hereby agrees that as to all goods, wares and merchandise, which are man- 4
ufactured under and in accordance with the patents hereinbefore named, the Purchaser will only resell such goods now on hand, or already purchased by him, irrespective of by whom such goods have been manufactured, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 9 hereof.

12. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the Sales Manager or his duly authorized representative located in the main sales office of the Company

.....

Accepted this.....

day of.....19...

.....(Purchaser)

.....(Company)

By.....

This statement must be signed by both Manufacturer and Jobber, detached and filed promptly with E. L. Wayman, Arrott Building, Pittsburgh, Pa.

Dated.....191..

E. L. WAYMAN, *Licensor,*
Arrott Building,
Pittsburgh, Pa.

This is to certify that a "Jobber's License Agreement" Purchase Contract has been executed between

..... (Manufacturer)

and ..... (Jobber)

(City and State).....

at the following Discounts (subject to the established rebates) from the Resale Prices established by you or that may be established by you during the period ending December 31st, 1910.

DISCOUNTS 1

Schedule No. 1 —5 year Guaranteed Bath, Foot, Pool, Sitz and Child's and Receptors ....

Schedule No. 2 —2 year Guaranteed Baths..... .....

Schedule No. 3 —All other Grades of Baths.... .....

Schedule No. 4 —Small Wares, Drinking Fountains, Lavatories, etc..... .....
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562..... 2

Schedule No. 4½—Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals ....

Schedule No. 5 —Flat Rim Sinks and Combinations, Square and Round Corner Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps..... 3

Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern..... .....

Signed:

..... (Manufacturer)

By 4

..... (Jobber)

By .....

1 PETITIONER'S EXHIBIT No. 12.

Filed Oct. 31, 1910.

Feb. 7, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:

Referring to the informal discussion that took place after the Regular Meeting regarding Resale Prices and
2 License Arrangement.

Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this arrangement? If such is the case will you kindly send me the following information as quickly as possible.

Schedule of Patents.

Pat. Number	*Date.*	*Inventor*	*Title.*

Applications—not issued

3 *Docket Number*	*Serial Number*	*Title*

In order to get a preliminary statement of each Manufacturer's ideas, will you kindly write me regarding the following:

1. Using the Standard Sanitary Mfg. Co.'s published prices as a basis, what differential, if any, do you believe your Company would require in order to obtain its fair share of the business?

Preferential Discount

4 Schedule 1. First Grade 5 year Guaranteed Baths
" 2. All other Grades of Baths.
" 3. Small Ware—Lavatories, etc.
(Note: On what competitive types of lavatories do you feel you could get the same price as the Standard.)
" 4. Sinks—F.R. and R.R.

2. How many active furnaces do you anticipate operating the balance of the year? This information is necessary in order to figure out the total amount of royalty.

Thanking you in advance for this information as promptly as possible, I am,

E. L. WAYMAN.

1 **PETITIONER'S EXHIBITS Nos. 13 to 28.**

Petitioner's Exhibits Nos. 13 to 28 are the sixteen license agreements entered into with Edwin L. Wayman by the corporation defendants.

Thirteen of the corporation defendants entered into these agreements on May 6, 1910, to wit:

	Exhibit No.
The Barnes Manufacturing Co.....	13,
The Day-Ward Company.....	16,
The Humphreys Manufacturing Co.....	17,
Kerner Manufacturing Co.....	18,
2 McVay & Walker.....	20,
The McCrum-Howell Co.....	21,
The National Sanitary Manufacturing Co.	22,
Standard Sanitary Manufacturing Co..	23,
Union Sanitary Mfg. Co.....	24
U. S. Sanitary Mfg. Co.....	25
A. Weiskittel & Son Co.....	26
Wheeling Enameled Iron Co.....	27
L. Wolff Mfg. Co.....	28

3 The other three entered into the agreements on the following dates:

	Exhibit No.
The J. L. Mott Iron Works, May 5, 1910..	19
Colwell Lead Co., May 25, 1910.....	14
The Cahill Iron Works, July 6, 1910....	15

These sixteen agreements are not copied in the record for the reason that each of them is identical with Petitioner's Exhibit No. 9 (*supra*, p. 20), except for certain preferential discounts which are written into paragraph 5 of the license agreement. These discounts are the preferential discounts 4 which were allowed to the smaller concerns. Where no preferential discounts are allowed the word "none" appears under the column headed "discounts."

The preferential discounts shown on these several exhibits are as follows:

1. The Barnes Mfg. Co.	Exhibit	13			None	1
2. Colwell Lead Co.	"	14	Schedule	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	2½%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
3. The Cahill Iron Works	"	15			None	
4. The Day Ward Co.	"	16	"	1	5%	
			"	2	None	
			"	3	None	
			"	4	2½%	2
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
5. The Humphryes Mfg. Co.	"	17	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	2½%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
6. Kerner Mfg. Co.	"	18	"	1	5%	
			"	2	2½%	3
			"	3	None	
			"	4	5%	
				Exceptions	2½%	
			"	4½	5%	
			"	5	None	
			"	6	None	
7. J. L. Mott Iron Works	"	19			None	
8. McVay & Walker	"	20	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	5%	
				Exceptions	2½%	
			"	4½	5%	4
			"	5	2½%	
			"	6	2½%	
9. The McCrum-Howell Co.	"	21	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	5%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	

10. The Nat'l. Sanitary Mfg. Co.	Exhibit	22	Schedule	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
11. Standard Sanitary Mfg. Co.	"	23				None
12. Union Sanitary Mfg. Co.	"	24	"	1		5%
			"	2		None
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
13. U. S. Sanitary Mfg. Co.	"	25				None
14. A. Weiskittel & Son Co.	"	26	"	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
15. Wheeling Enameled Iron Co.	"	27	"	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
16. L. Wolff Manufacturing Co.	"	28				None.

Each of the agreements is signed by Edwin L. Wayman and also as follows:

Exhibit 13. "The Barnes Mfg. Co.,
by T. R. Barnes, Scty. & Gen. Mgr."

Exhibit 14. "Colwell Lead Co.,
by J. T. Duryea, President."

Exhibit 14. "The Cahill Iron Works,
by Frank H. Caldwell, Prest."

Exhibit 16. "The Day Ward Co.,
by A. G. Ward, V. P."

Exhibit 17. "The Humphryes Mfg. Co.
by Reid Carpenter, Sec. & Treas."

Exhibit 18. "Kerner Mfg. Co.,
A. M. Frauenheim, Treas."

Exhibit 19. "The J. L. Mott Iron Works,
Max Goebel, Secretary."

Exhibit 20. "McVay & Walker,
per A. C. Walker."

Exhibit 21. "The McCrum-Howell Co.,
by Howard T. Gates, Secretary."

Exhibit 22. "National Sanitary Mfg. Co.
F. G. Borden, Pres."

Exhibit 23. "Standard Sanitary Manfg. Co.
By Theo. Ahrens, President."

Exhibit 24. "Union Sanitary Mfg. Co.,
By L. C. Huesmann, Pres."

Exhibit 25. "United States Sanitary Mfg. Co.
By C. H. Arrott, prest.
A. H. Cline, Jr., Sec'y."

Exhibit 26. "A. Weiskittel & Son Co.,
Anton Weiskittel, Pres."

Exhibit 27. "Wheeling Enameled Iron Co.
By J. E. Wright, Prest."

Exhibit 28. "L. Wolff Mfg. Co.
H. M. Hoelscher, Sec'y."

1 PETITIONER'S EXHIBIT No. 29.

Filed Nov. 1, 1910.

IN THE UNITED STATES CIRCUIT COURT

DISTRICT OF MARYLAND.

No.

UNITED STATES OF AMERICA, PETITIONER,

2 *vs.*

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS, DEFENDANTS.

Statements and Admissions of Defendants.

In order to expedite the hearing of this cause, we assent and agree that as against us respectively for the purposes of this cause only and to no other purpose, but subject to objections for irrelevancy, the statements and admissions
3 hereinafter contained may be taken and deemed true, and that this statement shall be made a part of the record.

WE ADMIT:

1. As to the allegations of Division 1, that the several corporation defendants are incorporated under the laws of the several states of the United States as stated in said Division 1, and with principal offices located at the places stated therein, except that The Humphryes Manufacturing Company's name is wrongly spelled.

4 2. The individual defendants are respectively officers of the several corporations defendant as follows:

Theodore Ahrens, Francis J. Torrance, E. L. Dawes, and W. A. Myler are president, first vice-president, second vice-president, and treasurer, respectively, of the Standard Sanitary Manufacturing Company.

Anton Weiskittei and John D. Heise are president and secretary, respectively, of A. Weiskittel & Son Company, and reside in the City of Baltmore, Maryland.

C. H. Voegele and T. R. Barnes are, respectively, presi-

dent and secretary of The Barnes Manufacturing Company. 1

F. H. Caldwell and J. J. Mahoney are, respectively president and vice-president of The Cahill Iron Works.

Jesse T. Duryea and Bert O. Tilden are, respectively, president and secretary of the Colwell Lead Company.

W. C. Winfield and A. G. Ward are, respectively, president and vice-president of the Day-Ward Company.

S. N. Ford and Reid Carpenter are, respectively, president and secretary of The Humphryes Manufacturing Company.

J. A. Frauenheim is president of the Kerner Manufacturing Company.

Jordan L. Mott and Max Goebel are, respectively, president and secretary of The J. L. Mott Iron Works. 2

Thomas Walker and Alexander C. Walker are, respectively, president and director of McVay & Walker.

Lloyd G. McCrum and Howard T. Gates are, respectively, president and secretary of The McCrum-Howell Company.

Frank G. Borden and D. W. Davis are, respectively, president and secretary of The National Sanitary Manufacturing Company.

L. C. Huesman and E. V. Brigham are, respectively, president and secretary of the Union Sanitary Manufacturing Company. 3

Charles F. Arrott and A. H. Cline, Jr. are, respectively, president and secretary of the United States Sanitary Manufacturing Company.

Ludwig Wolff and Herman M. Hoelscher are, respectively, president and secretary of the L. Wolff Manufacturing Company.

J. E. Wright and George W. Franzheim are, respectively, president and secretary of the Wheeling Enameled Iron Company.

Edwin L. Wayman is a resident of Pittsburg, with offices in the Arrott Building in that city. 4

3. All the defendants have been and now are engaged in the manufacture of sanitary enameled iron ware, such as bath tubs, wash bowls, lavatories, drinking fountains, etc., at their several factories, located respectively as follows:

Standard Sanitary Manufacturing Company, at Allegheny and New Brighton, Pa., and Louisville, Ky.

A. Weiskittel & Con Company, at Baltimore, Md.
The Barnes Manufacturing Company, at Mansfield, Ohio.
The Cahill Iron Works, at Chattanooga, Tenn.
Colwell Lead Company, at Elizabeth, N. J.
The Day-Ward Company, at Warren, Ohio.
The Humphryes Manufacturing Company, at Mansfield, Ohio.
Kerner Manufacturing Company, at Zelienople, Pa.
The J. L. Mott Iron Works, at Trenton, N. J.
McVay & Walker, at Braddock, Pa.
The McCrum-Howell Company, at Uniontown, Pa., and Norwich, Conn.
The National Sanitary Manufacturing Company, at Salem, Ohio.
Union Sanitary Manufacturing Company, at Noblesville, Indiana.
United States Sanitary Manufacturing Company, at Monaca, Pa.
L. Wolff Manufacturing Company, at Chicago, Ill.
Wheeling Enameled Iron Company, at Wheeling, W. Va.

CARROLL L. BOND
Noble, Jackson & Hubbard,
Solicitors for and of
counsel with defendants.

PETITIONER'S EXHIBIT No. 30. 1

Filed Nov. 1, 1910.

LIST OF JOBBERS
of
PLUMBING SUPPLIES
in the United States.

July, 1910.

Detroy all previous lists. 2

NATIONAL TRADE RESOLUTIONS.

RESOLVED, that the following expresses the opinion of this Association as to the proper definitions of manufacturers and jobbers of plumbing supplies and master plumbers.

Definition of a Manufacturer.

Any person, firm or corporation manufacturing supplies in the plumbing line of merchantable quality, or who purchases plumbing supplies and uses the same for the finishing of his product and who sells his product only through regular trade channels. 3

Definition of a Jobber.

Any person, firm or corporation dealing in plumbing supplies who continuously carries on stock a general assortment thereof (such as brass work, earthenware, enamel tubs and lavatories, lead pipe, traps and bends, range boilers, sinks, soil pipe and fittings, tanks, seats, etc.) of sufficient quantity to answer all ordinary requirements of the trade in his locality, and to enable him to fill from stock all reasonable orders; who does no contract work in said line, either directly or indirectly, and who sells goods only through regular trade channels. 4

Definition of a Master Plumber.

Any person, firm or corporation who represents the industry of plumbing; who does a merchant and contract business with the public generally; who is qualified under

and complies with the state laws and municipal ordinances respecting plumbing and plumbers where such exist, or where no licenses are required who fulfils the other requirements hereof; and in addition governmental agencies, water works, railroads, steamship companies, ship building companies, car building companies, packing and stockyard companies, educational and charitable institutions and manufacturing companies, provided they regularly employ journeymen plumbers continuously to install the same, and purchase plumbing supplies for their own use only.

Information.

There shall be furnished information to members as to the responsibility and business standing of persons, firms and corporations with whom the members are likely to deal.

The object of these resolutions is not to restrict trade within the membership of this association, or to limit the persons, firms or corporations to whom the members hereof may sell, or with whom they may deal, whether they be members of this association or not, but such object is to advise and inform the members of this association of the classification and standing of those with whom they are likely to deal, in order that each may decide for himself the terms and conditions upon which he will sell or buy goods.

LIST OF JOBBERS

of

PLUMBING SUPPLIES IN THE UNITED STATES.

√Crane Co., Birmingham, Alabama.
√Jefferson Plumbing and Mill Supply Co., Birmingham, Alabama.
√Crane Co., Little Rock, Arkansas.
√Boynton Co., H. R., Los Angeles, California.
√Busch Co., A. H., Los Angeles, California.
√Crane Co., Los Angeles, California.
√Harper & McReynolds Co., Los Angeles, California.
√Holbrook, Merrill & Stetson, Los Angeles, California.
√Montague, W. W., & Co., Los Angeles, California.
√Nelson Mfg. Co., N. O., Los Angeles, California.
√Tay Co. of Los Angeles, The, Los Angeles, California.
√Burns & Howard Co., Oakland, California.

√Crane Co., Oakland, California. 1
√Kinney Co., R. W., Oakland, California.
√Miller-Enwright Co., Sacramento, California.
√Western Metal Supply Company, San Diego, California.
√California Plumbing Supply Co., San Francisco, California.
√Crane Co., San Francisco, California.
√Dalziel-Moller Co., San Francisco, California.
√Haines, Jones & Cadbury Co., San Francisco, California.
√Holbrook, Merrill & Stetson, San Francisco, California.
√Kinney Co., San Francisco, California.
√Lally Co., San Francisco, California.
√Montague, W. W., & Co., San Francisco, California. 2
√Nelson Mfg. Co., N. O., San Francisco, California.
√Tay Co., Geo. H., San Francisco, California.
√Atkins McGee Supply Co., Denver, Colorado.
Denver Pump & Plumbing Co., Denver, Colorado.
√O'Fallon Supply Co., The M. J., Denver, Colorado.
√Morse Bros. Machinery & Supply Co., Denver, Colorado.
√Wolff Mfg. Co., L., Denver, Colorado.
√Nelson Mfg. Co., N. O., Pueblo, Colorado.
√Bridgeport Plumbing Supply Co., Bridgeport, Connecticut.
√Plimpton & Hills Corporation, The, Hartford, Connecticut.
√Mersick, C. S., & Co., The, New Haven, Connecticut.
√Peck Bros. & Co., The, New Haven, Connecticut. 3
√Delaware Electric & Supply Co., Wilmington, Delaware.
√Speakman Supply & Pipe Co., Wilmington, Delaware.
√Crane Co., Washington, District of Columbia.
√McCubbin Co., The C. J., Washington, District of Columbia.
√Mitchell, John, Jr., Washington, District of Columbia.
√Schafer, E. G. & Co., Washington, District of Columbia.
√Somerville Co., Thomas, Washington, District of Columbia.
√Hubbard Company, The S. B., Jacksonville, Florida.
√Crane Co., Atlanta, Georgia.
√General Supply Co., Atlanta, Georgia. 4
√Lowry Co., The, Atlanta, Georgia.
√Haines, Jones & Cadbury Co., Savannah, Georgia.
√McKenna, J. H., Savannah, Georgia.
√Cameron-Schroth-Cameron Co., Chicago, Illinois.
√Clow & Sons, Jas. B., Chicago, Illinois.
√Crane Co., Chicago, Illinois.
√Davies Supply Co., The, Chicago, Illinois.
√Deschauer, S., Chicago, Illinois.

1 √Federal Huber Co., Chicago, Illinois.
Geary, Andrew J., Chicago, Illinois.
√Gollner, Philip, Chicago, Illinois.
√Henion & Hubbell, Chicago, Illinois.
√Illinois Malleable Iron Co., Chicago, Illinois.
√Kellogg-Mackay Co., Chicago, Illinois.
√National Plumbing & Heating Supply Co., Chicago, Illinois.
√Quinn Supply Co., Chicago, Illinois.
√Republic Mfg. Co., Chicago, Illinois.
√Weil Bros., Chicago, Illinois.
√Weir & Craig Mfg. Co., Chicago, Illinois.
2 √Western Plumbing Supply Co., Chicago, Illinois.
√Whitney & Ford, Chicago, Illinois.
√Wolff Mfg. Co., L., Chicago, Illinois.
√Field & Shorb Co., The, Decatur, Illinois.
Kinsey & Mahler Co., Peoria, Illinois.
√Rockford Brass Works, Rockford, Illinois.
√May Supply Co., Anderson, Indiana.
√P. & H. Supply Co., Fort Wayne, Indiana.
√Central Supply Co., Indianapolis, Indiana.
√Indiana Supply Co., Indianapolis, Indiana.
√Crane Co., Indianapolis, Indiana.
√Crane Co., Muncie, Indiana.
3 √Keiser, Geo., & Co., Muncie, Indiana.
√Crane Co., Terre Haute, Indiana.
√Knapp Supply Co., The, Union City, Indiana.
√Cedar Rapids Pump Co., Cedar Rapids, Iowa.
Chandler Pump Co., Cedar Rapids, Iowa.
√Midland Plumbing Supply Co., Davenport, Iowa.
√Crane Co., Des Moines, Iowa.
√Kurtz Co., L. H., Des Moines, Iowa.
√Kretschmer Manufacturing Co., Dubuque, Iowa.
McDonald & Morrison Mfg. Co., A. Y., Dubuque, Iowa.
√Leighton Supply Co., Fort Dodge, Iowa.
4 √Crane Co., Sioux City, Iowa.
√Crane Co., Witchita, Kansas.
√Ahrens & Ott Mfg. Co., The, Louisville, Kentucky.
√Laib Co., Louisville, Kentucky.
√Vogel & Son, P. A., Louisville, Kentucky.
√Ahrens & Ott Mfg. Co., The, New Orleans, Louisiana.
Fairbanks Co., The, New Orleans, Louisiana.
√Manion & Co., New Orleans, Louisiana.
√Dunning & Co., R. B., Bangor, Maine.

√Blake, W. L., & Co., Portland, Maine. 1
√Smith & Abbott Co., The, Portland, Maine.
√Adt., John B., Baltimore, Maryland.
√Central Metal & Supply Co., Baltimore, Maryland.
√Crane Co., Baltimore, Maryland.
√Crook-Horner Co., Baltimore, Maryland.
√Cuyler & Mohler, Baltimore, Maryland.
√Krauss & Roberts, Baltimore, Maryland.
√Regester Supply Co., The Baltimore, Maryland.
√Robertson Mfg. Co., The James, Baltimore, Maryland.
√Southern Supply Co., Baltimore, Maryland.
√Maryland Supply Company, Cumberland, Maryland. 2
√Barrett Mfg. Co., Jas., Boston, Massachusetts.
√Braman, Dow & Co., Boston, Massachusetts.
√Brown-Wales Co., Boston, Massachusetts.
√Butler & Co., E. F., Boston, Massachusetts.
√Crane Co., Boston, Massachusetts.
√Dalton-Ingersoll Mfg. Co., Boston, Massachusetts.
√Dececo Co., The, Boston, Massachusetts.
√Estabrook's Sons, R., Boston, Massachusetts.
√Gallison Co., The Wm. H., Boston, Massachusetts.
√Gilchrist Co., Geo. E., Boston, Massachusetts.
√Hercules Iron & Supply Co., Boston, Massachusetts.
√Hubbard & Sons, W. B., Boston, Massachusetts. 3
√Locke, Stevens & Co., Boston, Massachusetts.
√Sanitary Fixtures Co., The, Boston, Massachusetts.
√Smith & Anthony Co., Boston, Massachusetts.
√Sumner & Gerald, Boston, Massachusetts.
√Thompson-Durkee Co., Boston, Massachusetts.
Webb Mfg. Co., F. W., Boston, Massachusetts.
√Young, Joseph H., Boston, Massachusetts.
Cambridge Plumbing Supply Co., Cambridgeport, Massachusetts.
√Bourneuf Corporation, Louis, Lynn, Massachusetts.
√New Bedford Boiler & Machine Co., New Bedford, Massachusetts. 4
√Ideal Supply Co., Somerville, Massachusetts.
√Hitchcook Supply Co., The, Springfield, Massachusetts.
New England Plumbing Supply Co., Springfield, Massachusetts.
Baker Lead Mfg. Co., Worcester, Massachusetts.
√Colwell Lead Co., Worcester, Massachusetts.
√Detroit Lead Pipe & Sheet Lead Works, Detroit, Michigan.

1 √ Harvey's Sons Mfg. Co., Ltd., A., Detroit, Michigan.
√ Kimball-Eisenberg Co., Detroit, Michigan.
√ Park & McKay Co., The, Detroit, Michigan.
√ Sales Co., Murray W., Detroit, Michigan.
√ Walker Mfg. & Supply Co., Detroit, Michigan.
√ Federal Huber Co., Grand Rapids, Michigan.
√ Ferguson Supply Co., Ltd., Grand Rapids, Michigan.
Grand Rapids Supply Co., Grand Rapids, Michigan.
√ Quinn Manufacturing Co., Kalamazoo, Michigan.
√ Michigan Supply Co., Lansing, Michigan.
Emerson-Corbin Supply Co., Menominee, Michigan.
2 √ Crane & Ordway Co., The, Duluth, Minnesota.
Duluth Plumbing Supplies Co., Duluth, Minnesota.
√ Central Supply Co., Minneapolis, Minnesota.
√ Kellogg-Mackay-Cameron Co., Minneapolis, Minnesota.
√ National Manufacturing & Supply Co., Minneapolis, Minnesota.
√ Crane Co., Minneapolis, Minnesota.
Gilmore Co., D. M., Minneapolis, Minnesota.
√ Reid Supply Co., Minneapolis, Minnesota.
√ Crane & Ordway Co., The, St. Paul, Minnesota.
Western Supply Co., The, St. Paul, Minnesota.
√ Crane Co., Kansas City, Missouri.
3 √ Kansas City Pump Co., The, Kansas City, Missouri.
√ Reeves Supply Co., Kansas City, Missouri.
√ Southwest Plumbing Supply Co., Kansas City, Missouri.
√ U. S. Water & Steam Supply Co., Kansas City, Missouri.
√ Young Supply Co., W. B., Kansas City, Missouri.
√ Horigan Supply Co., St. Joseph, Missouri.
√ Cahill-Swift Mfg. Co., St. Louis, Missouri.
√ Crane Co., St. Louis, Missouri.
√ Monument Plumbing Supply Co., St. Louis, Missouri.
√ National Plumbing Supply Co., St. Louis, Missouri.
√ Nelson Mfg. Co., N. O., St. Louis, Missouri.
4 √ Rumsey Mfg. Co., L. M., St. Louis, Missouri.
√ Cooper, Jr., H., Springfield, Missouri.
√ Missoula Mercantile Co., Missoula, Montana.
√ Cooper & Cole Bros., Lincoln, Nebraska.
√ Western Supply Co., Lincoln, Nebraska.
√ Crane Co., Omaha, Nebraska.
√ United States Supply Co., Omaha, Nebraska.
√ Manchester Supply Co., Manchester, New Hampshire.
Bayonne Supply Co., Bayonne, New Jersey.

√Fullmer, A. J., Camden, New Jersey. 1
Ronalds & Johnson Co., Camden, New Jersey.
√Orange Supply Co., East Orange, New Jersey.
√Elizabeth Hardware Co., Elizabeth, New Jersey.
√Herrmann, F. W., Guttenberg, New Jersey.
√Jersey City Supply Co., Jersey City, New Jersey.
√Perkins Co., Arthur L., Jersey City, New Jersey.
√Egbert W. V. & Co., Newark, New Jersey.
√Gray, R., jr., Newark, New Jersey.
√Macknet & Doremus Co., Newark, New Jersey.
√Newark Supply Co., Newark, New Jersey.
√Roe, Wm. S., Newark, New Jersey.
√Roe & Conover, Newark, New Jersey. 2
√Wulack, Benjamin, Newark, New Jersey.
√McNab & Harlin Mfg. Co., Paterson, New Jersey.
√Warren, Balderstone & Co., Trenton, New Jersey.
√Berger & Bro., Edward W., Weehawken, New Jersey.
√Hoy & Co., Albany, New York.
American Plumbing Mfg. Co., Brooklyn, New York.
√Atlantic Supply Co., Brooklyn, New York.
√Burr Mfg. & Supply Co., Brooklyn, New York.
Clark, John F., Brooklyn, New York.
√DeLaney, Thos. M., Brooklyn, New York.
√Jaobs, Geo. P., & Co., Brooklyn, New York. 3
√Knight, Thomas G. Co., Brooklyn, New York.
√McElraevy & Hauck Co., Brooklyn, New York.
√Read Lead Works, H. P., Brooklyn, New York.
Ronalds & Johnson Co., Brooklyn, New York.
√Sackin, B., Brooklyn, New York.
√Smyth-Donegan Co., Brooklyn, New York.
√Spencer & Haviland, Brooklyn, New York.
√Saltser & Weinsier, Brooklyn, New York.
√Irving D., Booth, Elmira, New York.
√Case, W. A., & Son Mfg. Co., Buffalo, New York.
√Dixon & Ballou, Buffalo, New York. 4
Frontier & Steam Supply Co., Buffalo, New York.
√Hamill Co., D. L., Buffalo, New York.
√Plumbers' & Steamfitters' Supply Co., Buffalo, New York.
√Schaefer & Co., Buffalo, New York.
√Warren & Dillward Co., Buffalo, New York.
√Zander Plumbing Supply Co., Buffalo, New York.
√Dimock & Fink Co., New Rochelle, New York.
√Adee Co., Fred, New York City, New York.

1 √Beals, H. H., New York City, New York.
√Behrer & Co., New York City, New York.
√Bronx Supply Co., New York City, New York.
√Behrer & Sons, Arnold, New York City, New York.
√Beith & Reilly Co., New York City, New York.
√Billo, Geo. H., New York City, New York.
√Campbell Supply Co., New York City, New York.
Central Plumbers Supply Co., New York City, New York.
√Colwell Lead Co., New York City, New York.
√Cushing Co., Thos. F., New York City, New York.
√Dimock & Fink Co., New York City, New York.
2 DuBois & Co., F. N., New York City, New York.
√Federal Huber Co., New York City, New York.
√Glauber, Sam. S. (Inc.), New York City, New York.
√Harlem Supply Co., The, New York City, New York.
√Hotchkiss, Vail & Garrison Co., New York City, New York.
√Hussey & Son, W. H., New York City, New York.
√Keating, Co., E. F., New York City, New York.
√Kenny Mfg. Co., New York City, New York.
√Klenert & Rosenbulth, New York City, New York.
Lederman, Saml., New York City, New York.
√Locke & Smith Co., New York City, New York.
√McShane Co., Wm., New York City, New York.
3 √Malbin, Mayer, New York City, New York.
Mayor, Lane & Co., New York City, New York.
√Meyer-Sniffen Co., The, New York City, New York.
√Mott Iron Works, The J. L., New York City, New York.
Murray, John A., New York City, New York.
√Nason Mfg. Co., New York City, New York.
√Peck Bros. & Co., The, New York City, New York.
√Pierce, Butler & Pierce Mfg. Co., New York City, New York.
√Read Lead Works, H. P., New York City, New York.
Ronalds & Johnson Co., New York City, New York.
√Simmons Co., John, New York City, New York.
4 Smolka & Co., Edw., New York City, New York.
√Standard Plumbing Supply Co., New York City, New York.
√United Plumbers' Supply Co., New York City, New York.
√Vogel, Ignatz, New York City, New York.
√Walsh & Hartwig (Inc.), New York City, New York.
√Hunting Co., The, Rochester, New York.
√Sloan, Samuel, & Co., Rochester, New York.
√Foley, James F., Syracuse, New York.
√McClure Co., The, R. C., Syracuse, New York.

√Pierce, Butler & Pierce Mfg. Co., Syracuse, New York. 1
√Aird-Don Co., Troy, New York.
√Millar, Charles, & Son, Utica, New York.
√Hunting Co., The, Watertown, New York.
√Weekes & Son Co., John, Watertown, New York.
√Yonkers Plumbing Supply Co., Yonkers, New York.
√Crane & Ordway Co., The, Fargo, North Dakota.
√Allman Co., W. H., Canton, Ohio.
√Crane-Hawley Co., Cincinnati, Ohio.
√Merkel Bros., Cincinnati, Ohio.
√Merrie, Hugh, Cincinnati, Ohio.
√McDonald, James, & Son, Cincinnati, Ohio. 2
√Murdock Mfg. & Supply Co., Cincinnati, Ohio.
√Cleveland Plumbing Supply Co., Cleveland, Ohio.
√Fisher Co., The E. W., Cleveland, Ohio.
√Kennedy Co., The, Cleveland, Ohio.
√Sanitary Co., The, Cleveland, Ohio.
√Standard Mfg. Co., Cleveland, Ohio.
√Welker Supply Co., Cleveland, Ohio.
√Ascher Supply Co., The, Columbus, Ohio.
Columbus Brass Co., The, Columbus, Ohio.
√Columbus Supply Co., Columbus, Ohio.
√Westwater Supply Co., The, Columbus, Ohio.
√Potts, Ben D., Columbus, Ohio. 3
√Sioto Valley Supply Co., Columbus, Ohio.
√Dayton Supply Co., Dayton, Ohio.
√Ross Supply Co., Greenville, Ohio.
√Sanitary Supply Co., Hamilton, Ohio.
√Hughes Supply Co., Mansfield, Ohio.
American Plumbers' Supply Co., The, Toledo, Ohio.
Grosswiller, Jos. F., Supply Co., Toledo, Ohio.
√National Supply Co., The, Toledo, Ohio.
Ohio Plumbers' Supply Co., Toledo, Ohio.
√Crane Co., Oklahoma City, Oklahoma.
Atlas Supply Co., Muskogee, Oklahoma. 4
√Crane Co., Muskogee, Oklahoma.
√Crane Co., Portland, Oregon.
√Gauld Co., The, Portland, Oregon.
√Kline, M. L., Portland, Oregon.
√Standard Supply & Equipment Co., Altoona, Pennsylvania.
√Sheet Metal & Supply Co., Lancaster, Pennsylvania.
√Berkstresser Co., Thos J., Philadelphia, Pennsylvania.
Blessing, C. A., Philadelphia, Pennsylvania.

1 Bridgman Bros., Philadelphia, Pennsylvania.
√Cooper Sanitary Mfg. Co., Philadelphia, Pennsylvania.
√Crane Co., Philadelphia, Pennsylvania.
Fleck Bros. Co., Philadelphia, Pennsylvania.
Ford & Kendig, Philadelphia, Pennsylvania.
√Froelich Bros., Philadelphia, Pennsylvania,
√Haines, Jones & Cadbury Co., Philadelphia, Pennsylvania.
√Haynes, Thompson Co., Philadelphia, Pennsylvania.
√Hydraulic Specialty Co., Philadelphia, Pennsylvania.
√Keystone Supply & Mfg. Co., Philadelphia, Pennsylvania.
√McCambridge Cooper Co., Philadelphia, Pennsylvania.
2 √Model Heating Co., Philadelphia, Pennsylvania.
√Perkes, Charles, Philadelphia, Pennsylvania.
√Rainear & Co., C. J., Philadelphia, Pennsylvania.
Ronalds & Johnson Co., Philadelphia, Pennsylvania.
√Savill & Sons, Thos., Philadelphia, Pennsylvania.
√Schuster Plumbing Supply Co., The, Philadelphia, Pennsylvania.
√Walls, Owen & Stambach Co., Philadelphia, Pennsylvania.
Anchor Sanitary Co., Pittsburg, Pennsylvania.
Bailey-Farrell Mfg. Co., Pittsburg, Pennsylvania.
√Bowman Supply & Manufacturing Co., Pittsburg, Pennsylvania.
3 √Cullen Mfg. & Supply Co., Pittsburg, Pennsylvania.
√Duquesne Sanitary Co., Pittsburg, Pennsylvania.
√Fort Pitt Supply Co., Pittsburg, Pennsylvania.
√Harris Pump & Supply Co., The, Pittsburg, Pennsylvania.
Kelly & Jones Co., The, Pittsburg, Pennsylvania.
√Pittsburg Supply Co., Pittsburg, Pennsylvania.
√Standard Mfg. Co., Pittsburg, Pennsylvania.
√Sterling Sanitary Mfg. Co., Pittsburg, Pennsylvania.
√McClure Co., R. C. Scranton, Pennsylvania.
√Weeks Co., R. E., Scranton, Pennsylvania.
Ford & Kendig, Scranton, Pennsylvania.
4 O'Malley Mfg. Co., Scranton, Pennsylvania.
√Pennsylvania Supply Co., Wilkes-Barre, Pennsylvania.
√Wyoming Valley Supply & Mfg. Co., Wilkes-Barre, Pennsylvania.
√Small Co., P. A. & S., York, Pennsylvania.
√Peck, Benj. T., Providence, Rhode Island.
√Phillips Lead & Supply Co., Providence, Rhode Island.
Providence Plumbing Supply Co., Providence, Rhode Island.

√Tillinghast Supply Co., L. H., Providence, Rhode Island. 1
√Cameron & Barkley Co., Charleston, South Carolina.
√Bailey-Lebby Co., The, Charleston, South Carolina.
√Southern States Supply Co., Columbia, South Carolina.
√Plumbing Supply Co., Sioux Falls, South Dakota.
√Crane & Ordway Co., The, Watertown, South Dakota.
√James Supply & Hardware Co., Chattanooga, Tennessee.
√Southern Brass & Iron Co., Knoxville, Tennessee.
√Crane Co., Memphis, Tennessee.
√√Nashville Plumbers' & Mill Supply Co., Nashville, Tennessee.
Honolulu Iron Works, Honolulu, Territory of Hawaii. 2
√Crane Co., Dallas, Texas.
√Gamer Co., The, Dallas, Texas.
√Gamer Co., The, Fort Worth, Texas.
√Ahrens & Alt Mfg. Co., The, Houston, Texas.
√Higgins Co., San Antonio, Texas.
√Crane Co., Salt Lake City, Utah.
√Nelson Supply Co., Jos., Salt Lake City, Utah.
√Lincoln Iron Works, Rutland, Vermont.
√Booker & Co., H. R., Hampton, Virginia.
√Virginia-Carolina Supply Co., Norfolk, Virginia.
√Bargamin Co., C. & A., Richmond, Virginia. 3
√McGraw-Yarbrough Co., Richmond, Virginia.
√Virginia-Carolina Supply Co., Richmond, Virginia.
√Bowles Co., Seattle, Washington.
√Crane Co., Seattle, Washington.
√Hambach Co., The A., Seattle, Washington.
√Crane Co., Spokane, Washington.
√Holley-Mason Hardware Co., Spokane, Washington.
√Hughes & Co., Spokane, Washington.
√Crane Co., Tacoma, Washington.
√Walsh & Gardner, Tacoma, Washington.
√Trimble & Lutz Supply Co., Wheeling, West Virginia. 4
Murphy Supply Co., Green Bay, Wisconsin.
√La Crosse Plumbing Supply Co., La Crosse, Wisconsin.
√Roosevelt Co., W. A., La Crosse, Wisconsin.
Hobbs Supply Co., Eau Claire, Wisconsin.
√Denkel Mfg. Co., F. R., Milwaukee, Wisconsin.
√Hoffman & Billings Mfg. Co., Milwaukee, Wisconsin.
√Hoffman Mfg. Co., B., Milwaukee, Wisconsin.
√Rom Co., The Robert, Milwaukee, Wisconsin.
√Rundle-Spence Mfg. Co., Milwaukee, Wisconsin.

1 Wisconsin Plumbing & Heating Supply Co., Milwaukee, Wisconsin.

JOBBERS HAVING SIGNED NOT IN BLUE BOOK.

Coates Plumbing Supply Co. Tampa, Fla.
John Harden Co., Chicago, Ill.
Turner Supply Co. East St. Louis, Ill.
National Mills Supply Co. Ft. Wayne, Ind.
Fred C. Dryer & Co. Cumberland, Md.
Wm. Bunting, Jr. Boston, Mass.
Central Closet Mfg. Co. Holland, Mich.
2 Marshall, Wells Hardware Co. Duluth, Minn.
United States Supply Co. St. Paul, Minn.
Reeves Supply Co. Kansas City, Mo.
Koken Barbers' Supply Co. St. Louis, Mo.
Stern & Goldberg, St. Louis, Mo.
Concord Pipe Co. Concord, N. H.
Eisner Bros. & Co. Inc. Newark, N. J.
Howard Plumbing & Supply Co. Newark, N. J.
Abe Smith Patterson, N. J.
J. A. Van Winkle Co. Patterson, N. J.
George W. Peck Co. Bath, N. Y.
3 Samuel Gasmer Brooklyn, N. Y.
Buffalo Plumbing Supply Co. Buffalo, N. Y.
Canfield Supply Co. Kingston, N. Y.
M. Buda New York, N. Y.
The Burr Mfg. Co. New York, N. Y.
D. A. DeLima & Co. New York, N. Y.
Jacob Efron, New York, N. Y.
Eichenbaum Bros. New York, N. Y.
Goblet Dolan Co. New York, N. Y.
W. D. Garrett & Co. New York, N. Y.
Louis Greenberg New York, N. Y.
4 John G. Kelly New York, N. Y.
The Kenney Specialty Co. New York, N. Y.
Rumsey Pump & Machine Co. New York, N. Y.
Isidor Schwartz New York, N. Y.
Schwartz Plumbing & Supply Co. New York, N. Y.
F. Sutherland Co. New York, N. Y.
Staten Island Supply Co. Staten Island, N. Y.
John Douglas, Cincinnati, Ohio.
Walter E. King Cincinnati, Ohio.

A. J. Roab, Kingston, Pa.
Pittsburg Inc. Supply Co. Pittsburg, Pa.
C. M. McClung & Co. Knoxville, Tenn.
H. A. Carpenter & Bros. El Paso, Tex.
Riverside Potteries Co. Wheeling, W. Va.
Jenkins Mfg. Co. New York, N. Y.
Blue and Queritle, New York, N. Y.
T. Noonan & Co. Boston, Mass.
Anderson, Lore Co. Los Angeles, Cal.
Westchester Supply Co. White Plains, N. Y.

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1 PETITIONER'S EXHIBIT No. 31.

Filed Nov. 2, 1910, by stipulation in substitution for Exhibit No. 31, filed Nov. 1, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

April 16, 1910.

The Price and Schedule Committee created at the meeting held in New York City, for the purpose of concluding the License and Resale Agreements, have just completed a
2 special session held at Mt. Clemens, Mich. beginning April 8th and ending April 14th.

All the details of the License Agreement and Jobbers' Agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the Committee making such additions or eliminations as they considered advisable.

Some changes were made in the arrangement of the Schedules as you will note by the attached copy as well as some changes in the differentials. All members who had suggestions to make or those whom the Committee desired to see, appeared before them and after going into all details
3 and bringing up every possible question they went away entirely satisfied after having presented the Committee with letters, several of which are given below:

> "We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents, and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebates that you may hereafter decide upon; it being understood that all Licensees shall be upon the same uniform schedule
> 4 of prices per furnace and the same uniform change and rebate. We further agree to maintain any and all stipulations and provisions set forth in the schedule and also to the different differentials established for our Company as shown in the attached sheet."
>
> "After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous

letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests." 1

The Committee will hold additional Meetings Tuesday April 19th at Pittsburgh and Thursday April 21st, at New York City, which Meetings are believed will finish all the preliminaries. You may, therefore, expect to receive a notice calling a General Meeting to be held in New York City during the first week in May for the purpose of executing the final License Agreement Papers which will put this and the Re-sale proposition into effect on June 1st., which date is being expected and insisted upon by the Jobbers throughout the country. The Papers you will be asked to sign at this meeting will not be subject to any further changes. They embrace the best suggestions made to the Committee, have been passed on by the best legal talent in the Country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual Companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter? 2 3

Yours very truly,

(Signed) E. L. WAYMAN.

The following "Preferentials Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1 —5 year Guaranteed Baths
" 2 —2 " " "
" 3 —All other grades of Baths
" 4 —Small Ware—Lavatories, etc.
" 4½—R. H. Sinks, Slop Sinks, Sink Backs, Drain Boards, Factory Sinks, Urinals, Hoppers, Laundry 4
5 —Sin
6 —Com
7 —Clos

. 562.

SCHEDULES.

Manufacturers.

	1	2	3	4	4½	5	6	7
Standard	None	None	None	None	None	None	None	None
Wolff	"	"	"	"	"	"	"	"
U. S.	"	"	"	"	"	"	"	"
Kohler	"	"	"	"	"	"	"	"
Barnes	"	"	"	"	"	"	"	"
Cahill	"	"	"	"	"	"	"	"
Mott	"	"	"	"	"	"	"	"
Union	5%	"	"	2½%	2½%	"	"	"
Colwell	5%	2½%	"	2½%	2½%	"	"	"
Clymer	5%	2½%	"	5%	5%	2½%	2½%	2½%
Blairsville	5%	2½%	"	5%	5%	2½%	2½%	2½%
McVay & Walker	5%	2½%	"	5%	5%	2½%	2½%	2½%
Kerner	5%	2½%	"	5%	5%	None	2½%	None
Weiskittel	5%	2½%	"	2½%	2½%	None	None	None
National	5%	2½%	"	2½%	2½%	None	None	None
Humphryes	5%	2½%	"	2½%	2½%	None	None	None
Day-Ward	5%	None	"	2½%	2½%	None	None	None
McCrum-Howell	5%	2½%	"	2 5%	2½%	None	None	None
Wheeling	5%	2½%	"	2½%	2½%	None	None	None

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets.

PETITIONER'S EXHIBIT No. 32.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April Eleventh, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

My dear sir:—

After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents, and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests.

Yours very truly,
THE DAY WARD CO.
By A. G. WARD, V. P.

PETITIONER'S EXHIBIT No. 33.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April Eleventh, Nineteen ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

My dear sir:—

After meeting with your Committee and having gone over in detail all of the matters under consideration, we hereby agree to manufacture all our ware under the standard Dredger patents, and also agree to the schedule of differentials in prices as submitted to me by your Committee.

Very truly yours,
C. E. GATES, *V. P. & Mngr.*
UNION SANITARY MFG. CO.,
Noblesville, Ind.

PETITIONER'S EXHIBIT No. 34.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connetion
Address
all communications to
The Colonial.

April Twelfth, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

Dear sir:—

The meeting with your Price and Schedule Committee has been entirely satisfactory to the National Sanitary Company, we agreeing to the Schedule of differentials as presented, also to work under the Standard Dredger Patents.

We also wish to compliment the Committee on the progress made and fully hope that the Meeting will close at an early date with your efforts appreciated by all and a satisfactory ending.

Yours very truly,
NATIONAL SANITARY MFG. CO.
F. G. BORDEN, *Pres.*

PETITIONER'S EXHIBIT No. 35.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

Colonial Hotel,
Mt. Clemens, Mich.

April 12th, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We hereby accept your proposition as to a License Agreement under U. S. Patent No. 633,941, granted to James Arrott Sept. 26th, 1899, by which we are permitted to use said Patent and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation; less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of Prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

HUMPHRYES MFG. CO.
By H. D. KENNEY.

PETITIONER'S EXHIBIT No. 36.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April thirteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon: it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Shedules and also to the differentials established for our Company as shown in the attached sheet.

A. W. WEISKITTEL & SON CO.
By ANTON WEISKITTEL.

1 PETITIONER'S EXHIBIT No. 37.

Filed Nov. 1, 1910

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

2 We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the 3 differentials established for our Company as shown in the attached sheet.

Yours truly,
WHEELING ENAMELED IRON CO.
by J. E. WRIGHT, *Prest.*

4

PETITIONER'S EXHIBIT No. 38.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, nineteen Ten

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) McVAY & WALKER.
per A. C. WALKER

PETITIONER'S EXHIBIT No. 39.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) KERNER MFG. CO.
H. T. FRAUENHEIM, *Secy.*

PETITIONER'S EXHIBIT No. 40. 1

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April twenty-first, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License 2
Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the 3
attached sheet.

(signed) THE J. L. MOTT IRON WORKS
E. HAMMANN.

4

1

PETITIONER'S EXHIBIT No. 41.

Filed November 1, 1910.

NOTE: This exhibit consists of a price list issued June 1, 1910, and contains 276 printed pages. Only the first few pages will be incorporated in this volume of Petitioner's Exhibits. Beginning with the cover the exhibit reads as follows:

2

PRICE LIST.

3

4

"LICENSED"
SANITARY ENAMELED IRON WARE.
June 1st, 1910.

LICENSED
SANITARY ENAMELED IRON WARE.

The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware made in accordance with these Patented Processes, may be easily identified, each fixture after June 1st, 1910, will bear the following Label:

LICENSED WARE

Patented

This fixture is in accordance lowing United Patent:

Manufactured with the fol- States Letters

Sept. 26th, 1899, No. 633,941
Nov. 9th, 1909, No. 939,918
Feb. 15th, 1910, No. 949,625

LICENSED LABEL

(Enlarged Reproduction.)

and its presence evidences that the best materials and processes have been employed in its manufacture.

Licensed Sanitary Enameled Iron Ware embodies all that is significant of

QUALITY AND PROGRESS.

June 1st, 1910.

TO LICENSED JOBBERS' SALESMEN:

This Price List is the property of E. L. Wayman, Arrott Building, Pittsburgh, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the Selling Prices I have established to Plumbers on Sanitary Enameled Iron Ware manufactured by the following companies, operating under patents owned by me and to whom I have granted licenses:

Barnes Manufacturing Co., The.....	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Company.....	New York
Day-Ward Co., The.....	Warren, Ohio
Humphryes Manufacturing Co.	Mansfield, Ohio.
Kerner Manufacturing Co.	Pittsburgh, Pa.
Mott Iron Works, The J. L.....	New York
McCrum-Howell Co.....	New York
McVay & Walker.....	Braddock, Pa.
National Sanitary Manufacturing Co...	Salem, Ohio
Standard Sanitary Manufacturing Co.	Pittsburgh, Pa.
Union Sanitary Manufacturing Co. ..	Noblesville, Ind.
United States Sanitary Manufacturing Co.	Pittsburgh, Pa.
Wolff Manufacturing Co., L.....	Chicago, Ill.
Weiskittel & Son Co., A.....	Baltimore, Md.
Wheeling Enameled Iron Co.....	Wheeling, W. Va.

It is necessary for all Licensed Manufacturers to sell their product manufactured in accordance with these Patents on the terms herein established and you are hereby notified that the License Agreements executed by your Company obligates it to resell the various Licensed Products at no better prices, terms, or other regulations than herein established. As changes, additions or eliminations occur, new sheets will be issued promptly.

E. L. WAYMAN.

Arrott Building, Pittburgh, Pa.

PAGE 1 1

CLASSIFICATION.

CLASSIFICATION OF SANITARY ENAMELED IRON WARE PRODUCTS.

Schedule No. 1—5 year Guaranteed Baths, Foot, Pool, Sitz and Child's, and Receptors .....

Schedule No. 2—2 year Guaranteed Baths..... 2

Schedule No. 3—All other Grades of Baths ....

Schedule No. 4—Small Wares, Drinking Fountains, Lavatories, etc..... CLASSIFICATIONS
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562.....

Schedule No. 4—½-Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals.... 3

Schedule No. 5—Flat Rim Sinks and Combinations, Square and Round Corner Kitchen; Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps

Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern 4

JUNE 1ST, 1910.

1 GENERAL CONDITIONS. PAGE 2

PRICES

Prices or other regulations are effective the morning of the date appearing on the sheet.

All prices are for bare fixtures WITHOUT fittings, except where specified.

Car load prices shall apply to shipments of Enameled Ware in car load lots in ONE DELIVERY only, to one purchaser and paid for by one purchaser.

LUMP SUMS

2 The ware covered by the Price Sheets shall be invoiced by individual items, fixtures to be billed separately (less all Fittings) and it is not permissible to bill collectively several articles in a "Lump Sum."

GUARANTIES

The various conditions respecting "Guarantees" under which the ware is purchased by the Jobber shall not be varied in the resale to the Plumber.

DELIVERIES.

3 Goods will be sold to the purchaser F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones with full freight allowed on shipments of 200 pounds and over (subject to the Freight Tariff Regulations herein provided for) to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of the Purchaser being charged and paying freight from the nearest city named.

DELIVERIES

4 NOTE: Goods may be shipped in mixed car loads to all points on, or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the railroad tariffs and Classifications.

Goods shall be sold at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

DELIVERIES, PAGE 2—Continued. 1

Purchaser (Jobbers only) will be allowed car load prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points, other than manufacturing points, car load or less car load prices will apply according to quantity. JUNE 1ST 1910

PAGE 3

DELIVERIES—Continued.

FROM JOBBER'S STOCK—ZONES—1, 2, 3, 4 and 5. 2

All shipments from Jobber's Stocks to other than Jobbing Points in Zones 1, 2, 3, 4 and 5 shall be billed F. O. B. Cars Point of Shipment.

If Jobbers find it necessary on Shipments from Stock to Non-Jobbing Points to equalize with other Jobbing Points, such Equalizations shall be made on the basis of the weights given in the Sheets and at the rates given in the Equalizing Freight Tariff Schedule. DELIVERIES 3

FROM JOBBER'S STOCKS—ZONES—5, 7, 8, 9, 10 and 11.

All Shipments from Jobber's Stocks to other than Jobbing Points in Zones 5, 6, 7, 8, 9, 10 and 11 shall be billed F. O. B. Cars Point of Shipment with actual freight allowed to Non-Jobbing Points.

DIRECT SHIPMENTS

FROM FACTORY—ALL ZONES. 4

Shipments to other than Jobbing Points made direct from the factory on Jobber's orders, or sales made direct to Plumbers by the Manufacturers, shall be billed at the prevailing Zone Prices plus freight charges from the nearest Jobbing Point, based on the weights given in the Sheets and at the rates given in the Freight Equalizing Tariff Schedule. JUNE 1ST, 1910

1

PAGE 4

FREIGHT ZONE (General)—Manufacturing and Jobbing Points

Car Load Zone 1, Prices will be allowed Purchaser (Jobber only) and actual freight allowed on C. L. and L. C. L. Shipments of 200 pounds and over to the following Manufacturing and Jobbing Points:

2

Allegheny, Pa.
Baltimore, Md.
Chicago, Ill.
Cincinnati, Ohio
Louisville, Ky.
Milwaukee, Wis.
Pittsburgh, Pa.
Wheeling, W. Va.

MANUFACTURING POINTS WHERE JOBBERS ARE LOCATED

The same conditions at Zone 2 Prices, will apply on shipments to

3

Chattanooga, Tenn.

Goods *must be sold to the Plumber at the Quantity Prices* established in the Sheets.

JUNE 1ST, 1910.

4

FREIGHT ZONE—No. 1.

PAGE 5

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 1, with full freight allowed on shipments of 200 pounds and over to the following cities:

Anderson, Ind.	Guttenberg, N. J.	Providence, R. I.
Albany, N. Y.	Hampton, Va.	Richmond, Va.
Altoona, Pa.	Hartford, Conn.	Rochester, N. Y.
Bangor, Me.	Indianapolis, Ind.	Rockford, Ill.
Bayonne, N. J.	Jersey City, N. J.	Rutland, Vt.
Boston, Mass.	Kalamazoo, Mich.	Scranton, Pa.
Bridgeport, Conn.	Lancaster, Pa.	Somerville, Mass.
Brooklyn, N. Y.	Lansing, Mich.	Springfield, Mass.
Buffalo, N. Y.	Long Island City, N. Y.	St. Louis, Mo.
Camden, N. J.	Lynn, Mass.	Syracuse, N. Y.
Cambridgep't, Mass.	Manchester, N. H.	Terra Haute, Ind.
Canton, O.	Mansfield, O.	Toledo, O.
Cleveland, O.	Menominee, Mich.	Trenton, N. J.
Columbus, O.	Muncie, Ind.	Troy, N. Y.
Cumberland, Md.	Newark, N. J.	Union City, Ind.
Davenport, Iowa.	New Bedford, Mass.	Utica, N. Y.
Dayton, O.	New Haven, Conn.	Washington, D. C.
Detroit, Mich.	New Rochelle, N. Y.	Watertown, N. Y.
Dubuque, Iowa.	New York, N. Y.	Weehawken, N. J.
East Orange, N. J.	Norfolk, Va.	Wilmington, Del.
Elizabeth, N. J.	Paterson, N. J.	Wilkesbarre, Pa.
Elmira, N. Y.	Peoria, Ill.	Worcester, Mass.
Fort Wayne, Ind.	Philadelphia, Pa.	Yonkers, N. Y.
Grand Rapids, Mich.	Portland, Me.	York, Pa.

FREIGHT ZONE 1 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following states:

Connecticut	Massachusetts	Rhode Island
Delaware	Michigan	Vermont
Illinois	New Hampshire	Virginia
Indiana	New Jersey	West Virginia
Kentucky	New York	Wisconsin
Maine	Ohio	
Maryland	Pennsylvania	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities based on respective C. L. or L. C. L. shipments.

JUNE 1 1910.

FREIGHT ZONE—No. 2.

PAGE 6

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 2, with full freight allowed on shipments of 200 pounds and over to the following cities:

Atlanta, Ga.	Knoxville, Tenn.
Birmingham, Ala.	Little Rock, Ark.
Chattanooga, Tenn.	Savannah, Ga.
Charleston, S. C.	Memphis, Tenn.
Columbia, S. C.	Nashville, Tenn.
Jacksonville, Fla.	New Orleans, La.

FREIGHT ZONE 2 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

Alabama	Mississippi
Arkansas	North Carolina
Florida	South Carolina
Georgia	Tennessee
Louisiana	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

JUNE 1ST, 1910

FREIGHT ZONE—No. 3.

PAGE 7

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 3, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

Cedar Rapids, Ia.	Ft. Dodge, Ia.	Minneapolis, Minn
Davenport, Ia.	Green Bay, Wis.	Omaha, Neb.
Des Moines, Ia.	Kansas City, Mo.	St. Joseph, Mo.
Dubuque, Ia.	LaCrosse, Wis.	St. Paul, Minn.
Duluth, Minn.	Lincoln, Neb.	Sioux City, Ia.

or to such points as may be fixed from time to time.

FREIGHT ZONE 3 JOBBING POINTS

To other than Jobbing Points in the following States:

Iowa	Missouri
Kansas	Nebraska
Minnesota	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST, 1910.

1 FREIGHT ZONE—No. 4.

PAGE 8

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 4, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Aberdeen, S. D.
Fargo, N. D.

2

or to such points as may be fixed from time to time.

FREIGHT ZONE 4

JOBBING POINTS

To other than Jobbing Points in the following States:

North Dakota
South Dakota

delivery can be made only on the basis of your
3 being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in
4 the Railroad Tariffs and Classifications.

JUNE 1ST 1910.

FREIGHT ZONE—No. 5.

PAGE 9

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 5, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

Dallas, Texas
Fort Worth, Texas
Houston, Texas
Oklahoma City, Okla.
San Antonio, Texas
Wichita, Kan.

FREIGHT ZONE 5 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

Oklahoma
Texas

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST 1910.

1 FREIGHT ZONE—No. 6.

PAGE 10.

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 6, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

DENVER, COLO.
PUEBLO, COLO.

FREIGHT
FREIGHT
ZONE 6
JOBBING
POINTS

2 or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

COLORADO
WYOMING

delivery can be made only on the basis of your being charged and paying freight from the
3 nearest Jobbing Point in the above list of Cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed carloads to points so provided for in the Railroad Tariffs and Classifications.

4 On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 6.

JUNE 1ST, 1910.

FREIGHT ZONE—No. 7. 1

PAGE 11

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 7, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Salt Lake City, Utah

or to such points as may be fixed from time to time. 2

To other than Jobbing Points in the following States: FREIGHT ZONE 7 JOBBING POINTS

Southern Idaho (South of 45th Parallel)
Utah

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 7. JUNE 1ST 1910 4

1 FREIGHT ZONE—No. 8.

PAGE 12

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 8, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Butte, Montana

2 or to such points as may be fixed from time to time.

FREIGHT ZONE 8

JOBBING POINTS

To other than Jobbing Points in the following State:

Montana

delivery can be made only on the basis of your being charged and paying freight from the above city, based on respective C. L. or L. C. L. shipments.

3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST, 1910

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 8.

4

FREIGHT ZONE—No. 9. 1

PAGE 13

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 9, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Spokane, Washington

or to such points as may be fixed from time to time. 2

To other than Jobbing Points in the following States: FREIGHT ZONE 9 JOBBING POINTS

Northern Idaho (North of 45th Parallel)
Eastern Washington (East of 120th Meridian)

delivery can be made only on the basis of your being charged and paying freight from the above city, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 9. JUNE 1ST, 1910 4

FREIGHT ZONE—No. 10.

PAGE 14

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located, at the Quantity Prices established for Zone 10, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Los Angeles, Cal.	San Diego, Cal.
Oakland, Cal.	San Francisco, Cal.
Portland, Oregon	Seattle, Wash.
Sacramento, Cal.	Tacoma, Wash.

FREIGHT ZONE 10 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing points in the following States:

California,
Nevada
Oregon
Washington (west of 120th Meridian)

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 10.

JUNE 1ST, 1910

FREIGHT ZONE—No. 11. 1

PAGE 15

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located, at the Quantity Prices established for Zone 11, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Phœnix, Arizona

or to such points as may be fixed from time to time. FREIGHT ZONE 11 JOBBING POINTS 2

To other than Jobbing Points in the following States:

Arizona
New Mexico

delivery can be made only on the bases of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 11. JUNE 1ST, 1910 4

[NOTE. This page is a typical page printed from the price list, Petitioner's Exhibit No. 41.]

BATHS—5 YEAR GUARANTEED—Schedule 1.
1½" to 2½" Rim.

Page 1

Similar to

Day-Ward	Sterling, Special, Venice
Humphryes	Pilgrim, Priscilla
Iron City	Regina, Florodora
Kohler	Narospace, Rival, Lotus
McCrum Howell	Richmond
McVay Walker	Mendota Naro
Mott	
National	Salvia
Standard	Shawmut, Keystone, Arlene, Ionian
United States	Excelsior
Union	
Wolff	
Weiskittel	Peerless, Worran

Baths 5 year

Length	4'-4½'	5'	5½'	6'	
List	$31.00	$35.00	$39.50	$46.00	
Shipping Weight	270 Lbs.	315 Lbs.	340 Lbs.	400 Lbs.	

DISCOUNTS.

	Zone	1	2	3	4	5	6	7	8	9	10	11
4'-4½'	L. C. L.	47	41	43	35	34	30	22	20	18½	31	15
	C. L.	50	45	46	42	38½	41	33	32⅓	31	36½	26½
5'	L. C. L.	47	42	44	36	34½	30½	22½	20	18½	31	15½
	C. L.	50	45½	47½	43	39½	39½	34	33⅓	31½	37	27
5½'	L. C. L.	46	41½	43	35	34	30½	22½	20	18½	30½	15
	C. L.	49	44½	46	42	38½	39	33⅓	33	31	36½	27
6'	L. C. L.	46	41½	43	35	34	30	22	20	18½	30½	15
	C. L.	49	44½	46	42½	38½	39	33⅓	32½	31	36½	27

Schedule 1

June 1, 1910

PETITIONER'S EXHIBIT No. 42. 1

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building.
Pittsburg.

May 28, 1910.

To the Jobbing Trade:

Gentlemen:—

Having acquired by purchase full ownership of the United States Letters Patent enumerated herein and being interested in maintaining the value of said Letters Patent, I have licensed the following manufacturers: 2

Barnes Mfg. Co. The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Co., ...	New York,
Day-Ward Co. The	Warren, Ohio.
Humphryes Mfg. Co. The, ...	Mansfield, Ohio.
Kerner Mfg. Co., ...	Pittsburgh, Pa.
Mott Iron Works, The J. L., .	New York City.
McVay & Walker	Braddock, Pa. 3
McCrum-Howell Co.	New York City.
National Sanitary Mfg. Co., ..	Pittsburgh, Pa.
Standard Sanitary Mfg. Co., ..	Salem, Ohio.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburg, Pa.
Wolff Mfg. Co.	Chicago, Ill.
Weiskittel & Son Co. A	Baltimore, Md.
Wheeling Enameled Iron Co.,	Wheeling, W. Va.

to practice in the manufacture of Sanitary Enameled Iron Ware the processes patented in said several Patents, to make and use in such manufacture, the machines and devices patented in said Patents and to use and sell goods so made on terms and conditions, the details of which I will send you on May, 31st. 4

Schedule of Patents.

Patent No.	*Date*	*Inventor*	*Title*
633,941.	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent. Material
944,625.	Feb. 15th, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nev. 9th, 1909	Wm. Lindsay	Enameling Powder. Distributor.

The Enameling Process Patents enumerated above cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

The terms and conditions under which the various Companies have been licensed provide only a reasonable Manufacturer's profit and it will be the aim of the Licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I therefore, ask your support in the effort to better conditions and to improve the general quality of Enameled Iron Ware, thereby increasing the use of the various licensed products to mutual advantage.

Yours very truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 43.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh.

May 31, 1910.

To the Jobbing Trade:

Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware, and my letter of the 28th, would state that it has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated.

The Price List will, therefore, become effective on the morning of June 6th, and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations, giving delivered prices at all Jobbing Points in every State, and equalizing rates to approximately 4,000 towns, has been compiled and printed in almost four weeks' time, speaks for itself.

Yours very truly,

E. L. WAYMAN.

1 **PETITIONER'S EXHIBIT No. 44.**

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

May 19th, 1910.

To the Jobbing Trade:

Will you kindly advise me by return mail how many copies of the Resale Price List covering "Licensed" Sanitary
2 Enameled Iron Ware you will require for salesmen and office use? This Price List will become effective June 1st and I would thank you for a prompt reply to this letter. Full details will be mailed you at the proper time, and the Price Books forwarded via Express.

Very truly yours,

E. L. WAYMAN.

P. S. Jobbers "West of Missouri River Points" kindly telegraph replies.

3

4

PETITIONER'S EXHIBIT No. 45.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburg

June 3rd. 1910.

To the Jobbing Trade:

The Sanitary Enameled Iron Ware industry has in the past been handicapped by the production and the marketing of quantities of "Seconds" or defective goods, due to improper designs, manufacturing methods and equipment. Such goods have been disposed of by the Manufacturers as other than "Seconds" but some unscrupulous Purchasers have in a great many instances disposed of them by misrepresentation thereby causing the Public who buy such goods to condemn Sanitary Enameled Iron Ware to the detriment of the industry as a whole.

The basic object of the Licensed Manufacturers in adopting uniform methods of manufacture is to eliminate as far as possible the production and disposal of "Seconds" thereby improving the general quality of their Ware.

The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware, made in accordance with these Patented Processes, may be easily identified, each Fixture manufactured after June 1st, 1910, will bear the following Label.

LICENSED WARE
Patented

This Fixture is Manufactured
In accordance With the Fol-
lowing United States Letters
Patent:

Sept. 26th. 1899, No. 633,941
Nov. 9th. 1909, No. 939,918
Feb. 15th. 1910, No. 949,625
(Enlarged Reproduction)

charges from the nearest Jobbing Point based on the weights given in the Sheets and at the rates given in the Freight Equalizing Tariff Schedule.

BOXING AND CRATING

These charges will be made on all goods by the Manufacturers and must be made by all Jobbers in the Resale at the Prices given in the Sheets. These prices are net (subject to the Discounts and Rebates *only* that are named in the "Jobbers License Agreement." The same applies to charges for Drilling, Decorating and other miscellaneous items shown in the Sheets.

SALES BY JOBBERS TO OTHER JOBBERS.

Sales by one Jobber to another cannot be made at any better prices than those established in the Resale Sheets.

GUARANTEES

The various conditions respecting Guarantees under which the Ware is purchased by the Jobber shall not be varied in the Resale to the Plumber. Particular attention is called to the practice that has been established in the past of labelling Non-Guaranteed Baths with the Jobbers Guaranteed Label. This practice will be considered a violation of the Jobbers' License Agreement.

Additional Sheets will be issued as fast as possible on items not covered in the enclosed Sheets.

The discounts herein named have been compiled with as much care and accuracy as would permit in the short time allotted to distributing these sheets to the jobbing trade, and you will confer a great favor by reporting promptly any apparent discrepancies or errors.

Yours truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 46.

Filed Nov. 1, 1910.

At the time you send out the Jobbers' Agreement Contracts to your Trade, copies of which I will furnish you this week, please write them the following letter without any change in the wording given.

"Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Sanitary Enameled Iron Ware for the period beginning June 1st. and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at one. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware."

Yours very truly,

(Signed)

Company

Yours truly,

Licensor

PETITIONER'S EXHIBIT No. 47.

Filed Nov. 1, 1910.

May 28, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Penna.

Dear Sir:—

At the time you send out the Jobbers' Agreement Contracts to your Trade, copies of which I will furnish you this week, please write them the following letter without any change in the wording given.

"Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Sanitary Enameled Iron Ware for the period beginning June 1st. and ending Dec. 31st. 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware."

Yours truly,

Signed: Company

Yours truly,

Signed: E. WAYMAN.
Licensor.

Mr. Gregg:

I want 500 (in numbers) such letters printed immediately.

F. J. T.

PETITIONER'S EXHIBIT No. 48.

Filed Nov. 1, 1910

Feb. 10. 1910.

E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

Acknowledging yours of the 7th regarding resale price and license arrangement. We are not prepared to state today that we would enter into a license arrangement and consequently are not sending you a list of our patents.

As you know, we are opposed to price agreements, but we are interested in anything which pertains to the betterment of business conditions and if anything develops along the line you have in mind we are satisfied at any and all times to market our output at prices equal to those of the Standard Sanitary Mfg. Company.

Very truly yours,
J. M. KOHLER SONS CO.,
per—
Pres.

WJK-W

PETITIONER'S EXHIBIT No. 49.

Filed Nov. 1, 1910

Feb. 12, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I am pleased to acknowledge receipt of your letter of the 10th with reference to Re-sale Prices and License Agreement.

I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while that I can count on your cooperation.

Yours very truly,
E. L. WAYMAN, *Commissioner.*

June 28, 1910

1 PETITIONER'S EXHIBIT No. 50.

Filed Nov. 1, 1910

Feb. 14, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

Resale Price and License Arrangement.

2 Answering yours of the 12th, as you know, from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves at present to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we decided at that time to become parties to this agreement, or to cooperate as outsiders, that we would in that event be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

Yours very truly,
J. M. KOHLER SONS CO.
per—

3 *Pres.*

WJK-W

4

PETITIONER'S EXHIBIT No. 51.

Filed Nov. 1, 1910

....

Feb. 25. 1910.

Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

Can you attend a meeting next Wednesday morning at Chicago of the companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the Special Meeting of all the Companies which is to be called the first part of next month at New York regarding Licenses and Re-sale prices?

The market conditions are such that this matter ought to be settled without further delay and I would thank you to telegraph me not later than Monday if you can attend.

Yours very truly,

E. L. WAYMAN,
Commissioner.

Copies to

H. M. Hoelscher	L. Wolff Mfg. Co.
F. J. Torrance	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.	U. S. Sanitary Mfg. Co.
W. J. Kohler	J. M. Kohler Sons Co.
H. T. Gates	McCrum-Howell Co.
J. B. Murphy	J. M. Kohler Sons Co.

1 PETITIONER'S EXHIBIT No. 52.

Filed Nov. 1, 1910.

March 16, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enlose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the
2 opportunity of seeing—

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humpharyes Mfg. Co.,
Union Sanitary Mfg. Co.

3

4

PETITIONER'S EXHIBIT No. 53. 1

Filed Nov. 1, 1910.

March 21, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We have your letter of March 16th. with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent counsel, who 2
advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

Very truly yours,
(Signed) J. M. KOHLER SONS CO.,
per—

WJK-D *Pres.* 3

4

1

PETITIONER'S EXHIBIT No. 52.

Filed Nov. 1, 1910.

March 16, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enlose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the
2 opportunity of seeing—

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humphryes Mfg. Co.,
Union Sanitary Mfg. Co.

3

4

PETITIONER'S EXHIBIT No. 53.

Filed Nov. 1, 1910.

March 21, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We have your letter of March 16th. with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent counsel, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

Very truly yours,
(Signed) J. M. KOHLER SONS CO.,
per—

WJK-D *Pres.*

1 PETITIONER'S EXHIBIT No. 54.

Filed Nov. 1, 1910.

March 23, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

There will be a special meeting of the Manufacturers for the purpose of entering into a License Agreement covering
2 the Manufacture of Sanitary Iron Enameled Ware at the Hotel Astor, New York City, beginning at 10:30 A.M. Tuesday morning, March 29th., and concluding probably the 30th.

The Hotel Management has placed at our disposal two Committee Rooms on the 8th floor free of charge, in consideration of which I would suggest that you stop at the "Astor" if possible.

Tomorrow I will send you copies of the License Agreement and the Jobbers' Agreement, etc. The entire matter together with the wording of the contracts has been passed
3 on by competent counsel.

Please come to the meeting prepared to file your "Future Delivery Orders."

Please advise if you will attend.

Yours very truly,
(signed) E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 55.

Filed Nov. 1, 1910.

March 29, 1910.

Telegram.

W. J. Kohler,
c/o J. M. Kohler Sons Co.

All manufacturers except you and Weiskittel represented at meeting. Weiskittel here to-night. 15 members here in person, balance by letter and wire. After a thorough consultation with attorney Jackson of Noble, Jackson & Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years. Sense of meeting favorable to license agreement and re-sale proposition. 91% of production voting favorable, some await consultation and consent of their associates or counsel. Members desire your wire time for tomorrow's meeting called for 10 A.M.

E. L. WAYMAN.

1

PETITIONER'S EXHIBIT No. 56.

Filed Nov. 2, 1910.

June 28, 1910.

Mar. 29, 1910.

Telegram.
Night Letter.

Mr. E. L. Wayman,
Hotel Astor,
New York.

2

You know our position on this question at present. Due to absence of counsel from city, we will not commit ourselves further on proposition now. If you will submit to us papers adopted at your meeting we will give matter further consideration.

(signed) WALTER J. KOHLER.

Pd.

3

PETITIONER'S EXHIBIT No. 57.

Filed Nov. 2, 1910.

Mar 31, 1910.

Telegram.

Walter J. Kohler:—

4

Matter shaped up here today and signed. Members pleased at your reply, as we can satisfy you legal end. Will you meet me Chicago or Sheboygan Saturday? Will submit brief and court decision. Would mail papers but cannot do so. Wire appointment to Pittsburg.

E. L. WAYMAN.
(Night Letter).

Pd.

PETITIONER'S EXHIBIT No. 58.

Filed Nov. 2, 1910.

Mar. 31, 1910.

Telegram.

E. L. Wayman
1509 Arrott Bldg.,
Pittsburg, Pa.

Our attorney will not be home before 7th. However, if you desire, can meet you at our Chicago office at nine Saturday morning, second, to discuss matters.
Pd. WALTER J. KOHLER.

PETITIONER'S EXHIBIT No. 59.

Filed Nov. 2, 1910.

Mar. 31, 1910.

Walter J. Kohler—

Will meet you 9 A.M. Saturday at your Chicago office.
Pd. (signed) E. L. WAYMAN.

1

PETITIONER'S EXHIBIT No. 63.

Filed Nov. 2, 1910.

April 29, 1910.

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Answering yours of April the 27th. Our Company is incorporated under the state laws of Wisconsin. As advised you sometime ago, we will not enter into a license
2 agreement and therefor will not be represented at the meeting in New York next week.

Very truly yours,
J. M. KOHLER SONS CO.,
per—

Pres.

3

PETITIONER'S EXHIBIT No. 64.

Filed Nov. 2, 1910.

May 2, 1910.

Dear Mr. Kohler:—

Notwithstanding your recent letters, I am enclosing you copies of the final forms for your perusal. I sincerely hope that you and Mr. Murphy will at least attend the meeting to be held at New York Friday.

4 With kindest regards, I am,

Yours very truly,
(Signed) E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 65.

Filed Nov. 2, 1910.

Mr. Frank S. Hanley, Dec. 7th, 1909
261 Broadway,
New York. *Personal*

Dear sir:—

Replying to your recent letters with reference to the Manufacturers selling concerns who did not come within the definition of a Jobber as defined by the National Trade Resolutions.

At the meetings of the Manufacturers' held Nov. 30th and Dec. 1st, the question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually *refuse to sell Jobbers* who in turn did not confine their sales through the recognized trade channels.

This individual expression was given with the understanding that the Manufacturers would receive support from the Jobbers in this matter. No concerted action on this matter was taken for reasons which you well know.

Attention was called to the fact that the Manufacturers had come in contact with several instances in which the Jobbers were doing the very thing they have been asking the Manufacturers not to do.

The Manufacturers, desire to receive assurances that the Jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect.

In view of all the efforts that have been made to get the Manufacturers unto this frame of mind, the Jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been presented to them to cooperate with the Manufacturers and eliminate the possibility of illegitimate concerns securing goods.

Will you be kind enough to take this up through the proper channels and let me hear from you?

Yours very truly,

PETITIONER'S EXHIBIT No. 66.

Filed Nov. 2, 1910.

ASSESSMENT FOR YEAR BEGINNING AUGUST 5TH, 1909.
" " " " FEBRUARY 5TH, 1910.

			Quarter.	
Blairsville Enameled Ware Co.	$ 150.00	$ 225.00	$ 37.50	$ 56.25
Barnes Mfg. Co., The	200.00	300.00	50.00	75.00
Cahill Iron Works, The	400.00	600.00	100.00	150.00
Colwell Lead Co.	150.00	225.00	37.50	56.25
Clymer Mfg. Co.	150.00	225.00	37.50	37.50
Day-Ward Co., The	300.00	450.00	75.00	112.50
Humphryes Mfg. Co.	300.00	450.00	75.00	112.50
Iron City Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Kohler Sons Co., J. M.	500.00	750.00	125.00	187.50
Mott Iron Works, J. L.	300.00	450.00	75.00	112.50
McVay & Walker	200.00	300.00	50.00	75.00
McCrum-Howell Co.	300.00	450.00	75.00	112.50
National Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
Standard Sanitary Mfg. Co.	2700.00	4050.00	675.00	1012.50
Union Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
United States Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Wolff Mfg. Co., L.	750.00	1125.00	187.50	281 25
Weiskittel & Son, A.	300.00	450.00	75.00	112.50
Wheeling Enameled Iron Co.	200.00	300.00	50.00	75.00
	$8500.00	$12750.00		$3187.50

PETITIONER'S EXHIBIT No. 67.

Filed Nov. 2, 1910.

AGREEMENT

This Agreement made this 5th day of May, 1910, by and between EDWIN L. WAYMAN, of Pittsburg, Allegheny County, Pennsylvania, party of the first part, and the J. L. Mott Iron Works, a corporation organized and existing under the laws of the State of New York, having a place of business at the City, County and State of New York, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
949,625	Feb. 15th, 1910	E. Ditheridge..	Pneumatic Sieve

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said letters Patent and inventions:

NOW, THEREFORE, be it known that the parties have agreed as follows:

First. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the part of the party of the first part.

Second. The party of the first part, for and in consideration of the said assignment, agrees that the party of the second part shall, at any time after the expiration of two years from the date hereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment, that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has affixed his hand and seal the day and year first above

written, and the party of the second part has caused these presents to be executed by its Secretary.

(signed) EDWIN L. WAYMAN [SEAL.]
(signed) THE J. L. MOTT IRON WORKS,
MAX GOEBEL, *Secretary.*

In presence of
WILLIAM J. J. BOWMAN
(signed)

2—392.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Received and Recorded on the 2nd day of June, 1910, in Liber M, 84, page 269 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the [SEAL.] seal of the Patent Office to be hereunto affixed.

(Signed) E. B. MOORE,
Commissioner of Patents.

Ex'd.
E.H.C.

PETITIONER'S EXHIBIT No. 68.

Filed Nov. 2, 1910.

ASSIGNMENT.

WHEREAS, The J. L. Mott Iron Works, a corporation organized and existing under the laws of the State of New York, and having a place of business at the City of New York, County and State of New York, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
949,625	Feb. 15th, 1910	E. Dithridge.	Pneumatic Sieve.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, Allegheny County, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby:

NOW, THEREFORE, be it known, that for and in consideration of the sum of *Five hundred Dollars* by the said Edwin L. Wayman in hand paid, the receipt of which is hereby acknowledged, The J. L. Mott Iron Works aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by said The J. L. Mott Iron Works had this sale and assignment not been made.

IN WITNESS WHEREOF, The J. L. Mott Iron Works has caused these presents to be signed by its Secretary this fifth day of May 1910.

THE J. L. MOTT IRON WORKS. [SEAL.]

MAX GOEBEL,
Secretary.

In presence of
W. J. J. BOWMAN

1 State of New York
City and County of New York. } ss.:

Before me, a Notary Public for said County, personally appeared Max Goebel, known to me to be the Secretary of The J. L. Mott Iron Works and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal this 5th day of May 1910.

CHAS. BANNENMULLER

[SEAL.] *Notary Public, New York County.*

2

My Commission Expires March 31st, 1911.

3

4

PETITIONER'S EXHIBIT No. 69.

Filed Nov. 2, 1910.

AGREEMENT.

This Agreement made this 4th day of May, 1910 by and between EDWIN L. WAYMAN, of Pittsburgh, Allegheny County, Pennsylvania, party of the first part, and the L. Wolff Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois, having a place of business at Chicago, Cook County, State of Illinois, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
939,918	Nov. 9th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said Letters Patent and inventions.

NOW, THEREFORE, be it known that the parties have agreed as follows:

First. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said Letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the party of the first part.

Second. The party of the first part, for and in consideration of the said assignment agrees that the party of the second part shall, at the expiration of two years from the date thereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has

affixed his hand and seal the day and year first above written, and the party of the second part has caused these presents to be executed by its Vice President and attested by its Secretary.

EDWIN L. WAYMAN [SEAL.]
L. WOLFF MFG. CO.
By JNO. CLIFFORD, *V. P.*

Attest:
HERMAN M. HOELSCHER
Secretary.

2—392,

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

RECEIVED and RECORDED on the 21st. day of June 1910 in Liber Y, 84, page 125 of Transfers of Patents,

IN TESTIMONY WHEREOF, I have caused the seal [SEAL.] of the Patent Office to be hereunto affixed.

Exd.
E. H. G.

(Signed) E. B. MOORE,
Commissioner of Patents

PETITIONER'S EXHIBIT No. 70.

Filed Nov. 2, 1910.

ASSIGNMENT.

WHEREAS, the L. Wolff Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois, and having a place of business at Chicago, Cook County, Illinois, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
939,918	Nov. 19th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, State of Pennsylvania, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby;

NOW, THEREFORE, be it known, that for and in consideration of the sum of Five Hundred ($500.00) Dollars by the said Edwin L. Wayman in hand paid, the receipt of which is hereby acknowledged, the L. Wolff Manufacturing Company aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by the said L. Wolff Manufacturing Company had this sale and assignment not been made.

IN WITNESS WHEREOF, the L. Wolff Manufacturing Company has caused these presents to be signed by its and attested by its Secretary, this Fourth day of May, 1910.

(Signed) L. WOLFF MFG. CO.
by JNO. CLIFFORD
Vice-President.

Attest:
HERMAN M. HOELSCHER
Secretary.

State of Illinois, } ss.:
County of Cook. }

Before me, a Notary Public for said County, personally appeared John Clifford, known to me to be the Vice-President of the L. Wolff Manufacturing Company and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal May 4, 1910.

HAMILTON MOSES,
Notary Public.

PETITIONER'S EXHIBIT No. 71. 1

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE CAHILL IRON WORKS
Chattanooga, Tenn.

SUBJECT May 5, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

2

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We wrote you on yesterday, sending same by special delivery, c/o Noble, Jackson & Hubbard, Attorneys, New York; you gave no street number, but presume the letter reached you, or rather that it will reach you to-morrow morning when you are expected to be in New York. This letter states that at the present time indications were more favorable than they had been previously, as to our going 3
into the arrangement, but that we could not say positively for a little while yet just what we would do.

In the meantime there are a few questions we would like to ask:

First of all, we understand that we are to make reports to Noble, Jackson & Hubbard's office, or whomever the Commissions may be, of every sale of enamel ware we make. We wish to ask whether these reports will be open to our competitors, and can they get a list of our customers, and find out just what class of goods they are getting from us? This would be quite a serious objection. We do 4
not see why this would be necessary, and it seems to us that the Commissioners themselves could keep such information as that confidential, so far as competitive factories are concerned. There are other matters upon which we must be advised from time to time, but will try to take them up a little later. Could you advise us on the above point at once?

Another matter that occurred to us, was this: You say that no B grades are to be sold. Supposing at a very long

distance from home, say for instance, in Utah, Colorado, or some far away point, some jobber gets some of our goods that prove defective, we, of course, will be allowed to adjust that matter by making a proper reduction so that the goods will not have to be returned to the factory from such a long distance. Has this matter been arranged for?

Trusting to hear from you in regard to the above at your first convenience, we are,

Yours very truly,
THE CAHILL IRON WORKS,
Per F. H. CALDWELL, (Signed)
Prest.

FHC-C

PETITIONER'S EXHIBIT No. 72.

Filed Nov. 2, 1910.

Telegram.

May 6, 1910.
Hotel Manhattan, N. Y.

Chattanooga, Tenn.
E. L. Wayman, N. Y.

Everything favorable. Can answer positive one week.
F. H. CALDWELL.

1 PETITIONER'S EXHIBIT No. 73.

Filed Nov. 2, 1910.

Established 1875

THE CAHILL IRON WORKS
Manufacturers of
PLUMBERS' PORCELAIN ENAMELED CAST IRON WARE
"SOUTHERN BEAUTY"

Lavatories, one-piece roll rim and apron sinks etc.

2 Factory, corner Boyce & 13th Sts.

Main Office and salesrooms, corner Boyce & 13th Sts.

Cable Address "CAHILL" Chattanooga.

Eastern Branch
No. 76 West 36th St. Chattanooga, Tenn, U. S. A.
New York City. May 7, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

3 Dear Sir:—

Your two telegrams received, the first one reading as follows:

> "License matter will be concluded tomorrow shall I include your goods in price list now in printers hands if you are withholding answer on account of patents you expect to issue to your company will say I will pay you for patents on same basis I have purchased others from Standard, Wolff and Mott, wire answer Manhattan Hotel".

4 The second one:

> "Your letter and telegram favorably received licenses executed this morning mailing yours."

Of course you had my reply to your first telegram, which was that I could not positively decide, but indications were favorable. This is all I can add at this time. I am sure all the gentlemen connected, yourself included, will say that I have been perfectly consistent up to this time. I am perfectly candid when I say, that while I see

quite a great many objections, which I suppose all the other gentlemen do, at the same time, there are objections in remaining on the outside and acting, to a certain extent, in the shape of an obstructionist. This we do not want to do, if we can prevent it. At the same time, there is still one obstacle to be overcome; how this will terminate we cannot say. If it is insurmountable, and we have to tell you that it is impossible for us to co-operate and be one of you you must not, and we do not believe can, consistently blame me. 1

As soon as I know whether we can join, then, of course, I will get all the information obtainable to determine fully what to do. No doubt you have all the plans, either in printed form or in such form as you can send it to me. I will be glad for you to mail this to me upon receipt of this letter. 2

You refer in your telegram to certain patents, on a dredger, which I will be pleased to take up with you. Of course it is not a question of money with us that we are trying to "hold anybody up" or anything of the kind, but I feel satisfied we have some very decided advantages on that line that are not known to our competitors generally. Our Company wants to be perfectly reasonable in regard to these matters, and will be ready to take them up with you just as soon as the remaining party, referred to in our telegram this morning, reports. 3

You certainly deserve credit for the persistency with which you have pushed this matter, and I can say very freely that you deserve success in any event.

Very respectfully,

F. H. CALDWELL. (Signed).

4

1 **PETITIONER'S EXHIBIT No. 78.**

Filed Nov. 2, 1910.

COPY

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.

Warren, Ohio, Jan. 11th, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

SUBJECT.

2 Dear Sir:—

The writer has gone into the question of the proposed Agreement for Licensed Manufacturers quite carefully, and has obtained some advice on same.

We are advised that this is legal, and there is no question but what it can be carried through all right. There are some questions, however, that would have to be settled, viz: the schedules and the differential in prices which would be allowed the different manufacturers. This, we suppose could be arranged satisfactorily to all parties concerned.

3 There is one other part also which has not been touched upon, and which we think is very necessary, and that is the question of re-sale prices, the prices at which this material should be sold by the jobber to the plumber. These could be taken up and carried out.

Aside from this, however, we would not care to have anything to do with it unless all the manufacturers of enameled ware were parties to the agreement. This, of course, includes The Standard Sanitary Mfg. Co. If they do not see their way clear to go into it, we think it would be better to let the matter drop.

4 Yours truly,

THE DAY-WARD CO.

Per A. G. WARD,

W/F. F.

PETITIONER'S EXHIBIT No. 79.

Filed Nov. 2, 1910.

COPY

W-1121004-I
Jan. 12th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 11th with reference to License Arrangement would state that most of the Companies are favorable to the matter on the same basis as you are, i. e., provided the Standard Sanitary Mfg. Company becomes a party to the Arrangement.

Since writing you I have been to Louisville where I took the matter up with Mr. Ahrens and Mr. Dawes. The matter appeals to them in several ways and while they have not given me any definite answer, I believe it strikes them quite favorably. I had in mind the re-sale price feature and am preparing some papers with reference to this end of it so that when the matter is taken up I will have ready considerable information and data with reference to it.

I think the question of differentials in prices among the Manufacturers can be arranged satisfactorily to all parties concerned provided it is decided to go ahead with the matter.

Yours very truly,

PETITIONER'S EXHIBIT No. 80.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.
Warren, Ohio.

March 12th, 1910

SUBJECT

To E. L. WAYMAN,
1509 Arrott Building,
Pittsburgh, Pa.

Dear Sir:—

Your letter of March 9th enclosing memorandum agreement arrived during the writer's absence. Would say that we will look this over. It has a great many good points, and we see no reason why this could not be drafted up and made to work satisfactorily.

There is one point which has been left out, which the writer deems most important. That is the question of the orders which the manufacturers have on their books at present.

Would say it will not be necessary for you to come to see the writer any particular time, but if you are in this part of the country, we wish you would stop off, as there are several matters which we would like to talk over with you personally.

Yours truly,
The DAY-WARD COMPANY
Per A. G. WARD (Signed)

W/F

PETITIONER'S EXHIBIT No. 81. 1

Filed Nov. 2, 1910.

COPY

W-3151007-I
March 15th, 1910

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 12th, I have secured the following signatures to the Memorandum of Agreement: 2

The McCrum-Howell Co.
Blairsville Enameled Ware Co.
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co.
L. Wolff Mfg. Co.
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphreyes Mfg. Co.
Union Sanitary Mfg. Co. 3

I think the matter is now an assured success and I will arrange to see you sometime the latter part of this week or possibly before that. I will phone you before hand so as to make sure that you are there.

Yours very truly,

4

1 PETITIONER'S EXHIBIT No. 82.

Filed Nov. 2, 1910.

W-471005-I

April 7th, 1910

Mr. A. G. Ward,
c/o Ward-Day Co.,
Warren, Ohio.

Dear Sir:—

2 Replying to your letter of the 6th would state that the Committee will start its session tomorrow at the Colonial Hotel, Mt. Clemens, Mich. If you think it advisable I am sure they would be glad to have you present to take up the matter in person. Your letter, however, is pretty clear on the matters you want and should any difficulties develop I will be glad to invite you to come to Mt. Clemens, if necessary.

Yours very truly,

3

PETITIONER'S EXHIBIT No. 83.

Filed Nov. 2, 1910.

Copy.

W-4191001-I.

April 19th, 1910.

Mr. A. G. Ward,
4 c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 18th would state that Mr. Weiskittel and Mr. Gates appeared before the Committee and signed the Agreement.

Mr. Kohler advised me that after a consultation with his attorney that he will not become a part yto the arrangement.

Yours very truly,

PETITIONER'S EXHIBIT No. 84. 1

Filed Nov. 2, 1910.

Copy.

THE DAY-WARD CO.

WARREN, OHIO, April 21, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:— 2

We are returning communication from The McCrum-Howell Co. in regard to Hoy & Co.

In regard to your letter W-4191001-I, would say we are very much disappointed that Kohler will not be a party to the agreement. We think we could get along without either Kohler or Iron City, but think it would be a great mistake to leave both of them out. Of the two we would prefer to see Kohler in.

Yours truly,
THE DAY-WARD CO.
Per A. G. WARD. 3

W/F

4

1 PETITIONER'S EXHIBIT No. 85.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.

Warren, Ohio.

May 12th, 1910.

SUBJECT.

To E. L. Wayman,
2 1509 Arrott Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Will you kindly send the writer the list of the Manufacturers of Enameled Ware who have signed the resale agreement, and also the exact percentage of output as represented by them.

Also advise whether or not any progress is being made toward getting the signatures of those who did not sign at the New York meeting.

3 Yours truly,

THE DAY-WARD CO.

W/F

4

PETITIONER'S EXHIBIT No. 86. 1

Filed Nov. 2, 1910.

W-5161001-I

May 16th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 12th. would state that I have received word from the Cahill Iron Works to meet them in Chattanooga with reference to signing up. The Blairsville Company advise that they will have a representative here to-morrow regarding the matter and I understand that the Iron City Company has told several of their large jobbers that they will enter into the arrangement if they say the word. I understand that they are saying it to them from all directions, and I have no doubt but that they will come along. 2

Mr. Ahrens and Mr. Torrance saw Mr. Murphy and Mr. Kohler at Chicago Saturday, but did not obtain much satisfaction. Mr. Ahrens is still on the job and will return to-morrow, at which time I will write you further. 3

Yours very truly,

4

1 PETITIONER'S EXHIBIT No. 87.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

McCRUM-HOWELL Co.

New York City.

February 14th, 1910.

SUBJECT "Resale Prices and Licensee Arrangement."

2 To E. L. WAYMAN,
1509 Arrott Bldg.,
Pittsburg, Pa.

Your letter of February 7th. received. We have no design patents, which I take it is what you want. We have some shop patents, however, if you want patents of that kind.

Regarding the differential to be used over Standard's published prices, would suggest 5% on the regular guaranteed label goods—this to include schedule #1 and #3, and 2½% on the Red and Black Label tubs. We will probably
3 operate eight furnaces the balance of the year.

This answers your letter of the 11th. as well.

Yours very truly,

HOWARD T. GATES,
Secretary.

HTG/EMT

4

PETITIONER'S EXHIBIT No. 88. 1

Filed Nov. 2, 1910.

COPY

Do not write regarding more than one subject on this sheet.

THE J. L. MOTT IRON WORKS

NEW YORK CITY

January 10, 1910.

SUBJECT: PRICES AND LEGAL ARRANGEMENT 2

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

Since receiving yours of the 31st ult. the writer has been looking for the copy of the proposed Legal Arrangement that you sent sometime ago but it must be mislaid. Will you kindly send another copy? 3

Yours very truly,
THE J. L. MOTT IRON WORKS,
E. HAMMANN.

EH/AS

4

GOVERNMENT'S EXHIBIT 89.

PETITIONER'S EXHIBIT No. 89.

Filed Nov. 2, 1910.

W-1121003-1

January 12th, 1910.

Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York City.

Dear Sir:—

Replying to your letter of the 10th. I enclose you a duplicate memorandum of the papers that were forwarded to you. This is being considered favorably by the majority of the companies and I would be glad to have your criticisms and suggestions as soon as practicable.

The papers I am sending you will undoubtedly be subject to changes, but the idea in the main is given therein. The proposition would have to embody a resale price to the plumber to make it complete.

Yours very truly,

PETITIONER'S EXHIBIT No. 90.

Filed Nov. 2, 1910.

April 29th, 1910.

Mr. E. Hammann,
c/o J. L. Mott Iron Works,
New York City.

Dear Sir:—

I have been unable to tell from your catalogue, what the list prices are without fittings. We are now making up the Price List on Licensed Ware and will you please have sent to me not later than the first of the week, the following information on *all* your Enameled Iron Ware.

List Price		Same as
Mott Plate No.	*Without fittings.*	*Standard Plate No.*

Also in addition to the above information please include in your statement the *width of the* Rims of your various makes of Enameled Iron Baths.

Will you kindly put some one on this job so that I can have the information by the time asked for? I am sorry I could not have given you more notice.

Thanking you in advance, I am,

Yours very truly,

1 **PETITIONER'S EXHIBIT No. 91.**

Filed Nov. 2, 1910.

On train near El Paso, May 7th, 1910.

Mr. E. L. Wayman,
Pittsburg,

Dear Sir:—

By this time I trust your long siege is over and that at your meeting in N. Y. this week final arrangements were consummated—sorry I could not be present.

2 I will be in Old Mexico for about ten days and when I come out I will want to know what is going on in our bus. world. Will you kindly send me, Care Higgins Co., San Antonio, Texas, a copy of the Mfgs. Agreement (License) and the Jobbers Agreement with re-sale prices: I want to study them and issue the necessary bulletin to our branches and salesmen. Make my name on the envelope *very large* and plain so the H Co. will not open it by mistake: also put on the envelope "to arrive".

A letter from you telling the "news" and items of interest will be welcome.

3 Yours sincerely,

EDWARD HAMMANN.

4

PETITIONER'S EXHIBIT No. 92.

Filed Nov. 2, 1910.

May 10th, 1910.

Mr. Edward Hammann,
c/o Higgins & Co.,
San Antonio, Texas.

Dear Mr. Hammann:

I was very glad to receive your letter of the 7th. written on the train near El Paso.

We had our meeting, Friday of last week in the offices of Noble, Jackson & Hubbard, where we consummated the deal and signed the License Papers. Your company could not have a representative on hand but greatly facilitated matters by transferring the patents to me, the day previous to the meeting, as well as executing the License Agreement.

I enclose you copy of the License Agreement together with a copy of the Jobbers Agreement which may have some changes in it before it is finally issued. We think, possibly, that it might be well to have a meeting of all the salesmen sometime before the 1st. of June, so that they may thoroughly understand the matter in detail and be able to re-tell it to the jobbers in the manner it should be told.

We are now busy making up the Price List (I have six people besides myself working on it) and will be able to get everything out covering all the staples by June 1st. Sheets covering special material will follow as rapidly as possible.

We all missed you very much, but inasmuch as you were with us in spirit, it was some better than one or two people who were neither.

Every one feels very enthusiastic about the matter and I believe it will be a success.

As soon as you get time, I would appreciate a line from you.

Yours very truly,

PETITIONER'S EXHIBIT No. 93.

Filed Nov. 2, 1910.

ON TRAIN, MAY 21ST, 1910.

Dear Mr. Wayman:—

Many thanks for yours of the 10th. inst. and the copies of License & Jobbers Agreement.

The list of mfrs. in the Jobbers Agreement includes Kohler and Iron City, which means, I take it, that the united efforts to draw them into the fold were successful, if so Mr. Jackson will be quite satisfied with the percentage of mfrs. represented.

Discounts from resale prices—Why were these so materially reduced? Will the jobbers be content with 7½ and 5% and 5 & 5%?

Price list—The preparation of this must be a huge task. May I ask you to send me, as much before June 1st. as possible, a copy of the re-sale prices? I want to prepare our bulletin of instructions for branches and salesmen.

You refer to "a meeting of all the salesmen some time before June 1st." How comprehensive will this meeting be and where held?

I will be in Chicago Monday and Tuesday morning, c/o The J. L. Mott Iron Works, and in New York Wednesday.

Yours truly,

EDWARD HAMMANN.

PETITIONER'S EXHIBIT No. 94.

Filed Nov. 2, 1910.

W-5261002-I
May 26th, 1910.

Mr. Edward Hammann,
C/o J. L. Mott Iron Works,
New York, N. Y.

Dear Sir:—

Replying to that part of your letter of the 21st with reference to the margin of profit to the jobber. This figures from 17 to 21%, depending on the class of goods he purchases as well as the quality. Full information regarding all the details will be sent you the same time as it is sent to the other companies.

Yours very truly,

PETITIONER'S EXHIBIT No. 95.

Filed Nov. 2, 1910.

Telegram.
Postal Telegraph Commercial Cables.
Received at
236 Fourth Ave., Phone 407 Court.

137 G. W. 15. 45 lp.
New York May 19 '10.
E. L. Wayman,
1500 Arrott Bldg., Pgh—

Kindly mail special delivery our Boston New York and Phila. offices copies Jobbers agreement for Resale.

(Signed) FRANCIS J. TORRANCE.

1 PETITIONER'S EXHIBIT No. 96.

Filed Nov. 2, 1910.

W.-5191008-1
May 19th, 1910.

Standard

In reply to a telegraphic request from New York by Mr. Torrance I enclose you herewith copies in duplicate of the Jobbers' Agreement. I am unable to send you a copy that will be finally adopted as these will not be out until next week, but the final copy will be substantially the same as the
2 enclosed with some minor changes.

The amount of rebate based on purchases still has to be determined for the various quantities. In talking with any of the Jobbers please do not let these papers get out of your possession and return them to me as soon as you receive the revised copies. The discounts named on the first page have been reduced to 5%, inasmuch as this difference will exist in the Resale sheets between Carload and less than Carload Prices.

Yours very truly,

3

PETITIONER'S EXHIBIT No. 97.

Filed Nov. 2, 1910.

COPY.

Union Sanitary Mfg. Co.,
Noblesville, Ind.
Indianapolis, Ind., Feb. 12, 1910.

Mr. E. L. Wayman,
4 1509 Arrott Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Have your favor of the 11th inst. and wish to say in reply thereto—no doubt Mr. Gates will take this matter up with you in reference to Patents and Preferential Discounts.

Hoping that this will be satisfactory, remain,

Yours very truly,

LCH. L. C. HUESMANN.

PETITIONER'S EXHIBIT No. 98.

Filed Nov. 2, 1910.

Union Sanitary Mfg. Co.,
Noblesville, Ind.

February 22, 1910.

Dear Sir:—

Referring to your favor of the 7th, will state that we have no patents that would be of any benefit to any one.

Regarding the preferential discount we are willing to secure the Standard Sanitary Mfg. Co.'s prices. Not their published prices but their actual prices on all ware.

We expect to operate six furnaces during this entire year. We are now using four.

Very truly yours,
UNION SANITARY MFG. CO.,
Per C. E. GATES,
2nd Vice-Pres. & Gen'l Mgr.

PETITIONER'S EXHIBIT No. 99.

Filed Nov. 2, 1910.

Circular

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5111005-I

May 11th, 1910

Under your license you will be required after June 1st to place a Label on every piece of ware shipped out, which will read approximately as follows:

This fixture is manufactured under the following United States Letters Patent."

Date Serial Number.

Kindly advise me by return mail how many of these Labels you will want in your first supply. They will come in the shape of rolls and perforated so that they may be torn off like stamps.

Thanking you for a prompt reply, I am
Yours very truly,

1 PETITIONER'S EXHIBIT No. 100.

Filed Nov. 2, 1910.

(Copy)

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Circular.

W-661011-I.

June 6th, 1910.

2 *To the Licensees*:

Kindly advise me if you have received your License Labels and if you are using them. These Labels should be on all Ware manufactured after June 1st.

Yours very truly,

Licensor.

3 PETITIONER'S EXHIBIT No. 101.

Filed Nov. 2, 1910.

(Copy)

W-5111001-I

May 11th, 1910.

Will you kindly advise me by return mail how many copies of the Resale Price Book you will require for your salesmen and office men. I will send from this office the
4 necessary copies to the Jobbers so that in naming your quantity, you need not take into consideration your customers requirements.

Yours very truly,

PETITIONER'S EXHIBIT No. 102.

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Circular

W-5291003-I

May 29th, 1910.

Salesmen's Meeting

To the Licensees:

It was suggested sometime ago that just previous to the time that the Resale matter would take effect that there be held a General Meeting of the Manufacturers' Salesmen and the details thoroughly explained to them; lack of time has thus far prevented this.

In view of the fact that we now have an extra week's time, I would personally like to have the various Manufacturers' Salesmen meet me in Pittsburgh on Saturday, June 4th, for the following reasons.

It is almost impossible to thoroughly explain the matter to both Jobber and Salesman in any printed matter that may be issued. I have tried to cover all points in the printed matter I have prepared, but the salesmen will be undoubtedly asked a lot of questions that they should be able to answer in the proper way.

I have talked with several jobbers who were absolutely apposed to the proposition in general but after the matter was thoroughly explained to them they became very enthusiastic. I would, therefore, like to have the individual salesmen know the story from A to Z and be prepared to retell to their jobbers with a complete knowledge of the situation and in a convincing manner.

Most of the salesmen do not know each other and I believe if they did know each other it would help to promote better harmony and enable them collectively to present this

matter to the Jobbers in a better way than is possible under the present circumstances.

Will you kindly telegraph me upon receipt of this letter if you can have your salesmen in Pittsburgh Saturday so that I can make the proper arrangement to take care of them? Upon receipt of the replies, I will advise you definitely regarding the details.

Yours very truly,

Licensor.

PETITIONER'S EXHIBIT No. 103. 1

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
ARROTT BUILDING
PITTSBURGH.

May 28th, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.
Pittsburgh, Penn'a.

To the Jobbing Trade: 2

Gentlemen:

Having acquired by purchase full ownership of the United States Letters Patent enumerated herein and being interested in maintaining the value of said Letters Patent, I have licensed the following manufacturers:

Barnes Mfg. Co., The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Co.	New York.
Day-Ward Co., The	Warren, Ohio. 3
Humphryes Mfg. Co., The	Mansfield, Ohio.
Kerner Mfg. Co.	Pittsburgh, Penn'a.
Mott Iron Works, The J. L.	New York City.
McVay & Walker	Braddock, Pa.
McCrum-Howell Co.	New York City.
National Sanitary Mfg. Co.	Salem, Ohio.
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.
Wolff Mfg. Co., L.	Chicago, Ill.
Weiskittel & Son Co., A.	Baltimore, Md. 4
Wheeling Enameled Iron Co.	Wheeling, W. Va.

to practice in the manufacture of Sanitary Enameled Iron Ware the processes patented in said several Patents, to make and use in such manufacture, the machines and devices patented in said Patents and to use and sell goods so made on terms and conditions, the details of which I will send you on May 31st.

Schedule of Patents.

Pat. No.	*Date*	*Inventor*	*Title*
633,941	Sept. 26, 1899	James Arrott	Dredger for Pulverulent Material.
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve.
939,918	Nov. 9, 1909	Wm. Lindsay	Enameling Powder Distributor.

The Enameling Process Patents enumerated above cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

The terms and conditions under which the various Companies have been licensed provide only a reasonable Manufacturer's profit and it will be the aim of the Licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I, therefore, ask your support in the effort to better conditions and to improve the general quality of Enameled Iron Ware, thereby increasing the use of the various licensed products to mutual advantage.

Yours very truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 104. 1

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-529-1001-I

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Penn'a.

May 29th, 1910.

To the Licensees:— 2

Attached find copy of letter I will issue Tuesday to the Jobbing Trade. The information contained therein is correct but in addition to this, I wish to advise you that considerable unexpected difficulty was experienced at the last moment in securing the co-operation of the Crane Company. This was finally accomplished and concluded yesterday by Mr. Ahrens of the Standard Sanitary Mfg. Co., who was delegated as a Committee of one to see them. It may be necessary to make some minor changes in the wording of the Jobbers' License Agreement and the Commission provided for in your License Agreement will take the matter 3 up next Wednesday at a Special Meeting. The final printed matter from a Resale basis, will, therefore, go into effect on June 6th, but you are hereby notified to withhold any billing on orders received from jobbers after June 1st, until you receive the printed matter referred to, as your License Agreement becomes effective June 1st.

The Jobbers' License Agreements will be forwarded to you by express on Friday, June 3rd and the Resale Price List on June 4th. Please make arrangements to forward the Jobbers' License Agreements to your Trade on the 4th, so that they will reach your customers on the 6th. The form 4 of letter to be sent with these contracts was outlined in my letter to you of May 25th.

Yours very truly,

E. L. WAYMAN,
Licensor.

1

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5291002-I

May 29th, 1910.

(To be issued May 31st, 1910)

To the Jobbing Trade:

Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware
2 and my letter of the 28th, would state that it has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated.

This Price List will, therefore, become effective on the morning of June 6th and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations giving delivered prices at all Jobbing Points in every State and equalizing
3 rates to approximately 4,000 towns, has been compiled and printed in almost 4 weeks' time speaks for itself.

Yours very truly,

4

PETITIONER'S EXHIBIT No. 105.

Filed Nov. 2, 1910.

W-6101008-R.

June 10, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patents of process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

Yours very truly,

Licensor.

PETITIONER'S EXHIBIT No. 106.

Filed Nov. 2, 1910.

Pittsburgh, Pa.,

June 17th, 1910.

Atlas Supply Co.,
Muskogee, Okla.

If you will sign license agreement will authorize you to handle Kohler ware subject to resale terms for a reasonable length of time with understanding that you will at once decrease your purchases and stock licensed ware and further sale of it and furnish me monthly statement of purchases from Kohler. Licensed Manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young and Crane are supporting Licensed Manufacturers. Reeves wires he has put resale into effect and intends to sign. Expect US Water will sign today. Wire answer.

(Signed) E. L. WAYMAN.

Charge to E. L. Wayman, 1302 Arrott Bldg.

PETITIONER'S EXHIBIT No. 107.

Filed Nov. 3, 1910.

W-6221021-I

June 22nd, 1910.

Atlas Supply Company,
Muskogee, Okla.

Gentlemen:—

Answering your letter of the 18th, would state that if you will sign the Jobbers' License Agreements, I will authorize you to continue purchasing Kohler's Ware as outlined in my telegram of the 17th, with the understanding that you maintain the Resale Prices. Will you kindly acknowledge receipt of this letter?

Yours very truly,

PETITIONER'S EXHIBIT NO. 108.

Filed Nov. 3, 1910.

"PROPOSED ARRANGEMENT FOR LICENSED MANUFACTURERS."

The execution of a Licensee Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Electric Dredgers, and under his right to grant Licenses for manufacturing Ware by Air Dredgers.

The manufacturers to be divided into three classes according to the proportion their business bears to the whole and to execute licenses to be known as follows and on the following terms.

Class A	Manufacturers	License	Royalty	$1500. per month.
Class B	"	"	"	1200. per month.
Class C	"	"	"	800. per month.

At the end of the third month the above royalties will be subject to 95% rebates if the terms of the license have been complied with and at the termination of each succeeding month a like rebate.

75% of the penalties deducted from the manufacturers violating agreement, to be divided among the Licensees in good standing for the month in proposition to the sum each Company's royalties bear to the whole.

The division of the ware into four schedules as follows:

Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Piece, Flat Rim Sinks.

Price preferentials to be arranged something like the following:

In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price differentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement.

1 Such an arrangement would not interfere with the Association as it exists or the purpose for which it was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation. It would be my idea to create a list of differentials for the various Companies from a standard price list and these differentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

I have taken this matter up with some of the Companies verbally and they are very much in favor of it. Will you kindly look over the attached papers and let me have your
2 ideas in the matter as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I can arrange to put the arrangement into working order by Jan. 1st, 1910.

3

4

PETITIONER'S EXHIBIT No. 109.

Filed Nov. 3, 1910.

THIS AGREEMENT, Made in duplicate this day of by and between E. L. Wayman, a resident of the City of Pittsburgh of the State of Pennsylvania (hereinafter called the "Licensor") party of the first part, and a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee") party of the second part,

WITNESSETH:

(1) THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive Class ( ) license to make and sell Sanitary Iron Enameled Ware under the following United States Letters Patents, to wit:

upon the terms and conditions in said License and License agreement set forth; and

(2) WHEREAS, the Licensor owns or has the right to grant Licenses under the following additional United States Letters Patent, to wit:

(3) AND, WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's

(4) NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

(5) The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive license to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said

(6) Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

1 CLAIMS (7) The Licensor hereby agrees to suspend his claims against the Licensee and its customers for damages or profits which they may be entitled to receive for any claim for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

(8) So long as the Licensee operates under this license or any renewal thereof and keeps and performs all of the obligations of said Licensee herein contained, the Licensor agrees not
2 to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and for which patents have already been issued to said Licensor, and to waive and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensor full use and enjoyment thereof.

3 ROYALTIES (9) The Licensee shall pay the following royalties for License herein granted, to wit:

Class A License $1500. per month.
Class B License $1200. per month.
Class C License $ 800. per month, payable on or before the 5th day of each month as follows:
5% in cash, 95% in 90 days promissory notes without interest.

(10) This agreement is entered into as a Class ( ) License, with the following price differ-
4 entials:

	(Subject to exceptions in paragraph 11)	Selling Discount from Price List issued by the Licensor.
Schedule 1	First Grade Guaranteed Baths	*
" 2	All other Grades of Bath	*
" 3	Small Ware—Lavatories, etc.	*
" 4	R. R. Sinks—1 & 2 Piece	*
"	Flat Rim Sinks	*

CHANGE OF LICENSE CLASS

but may be changed to either Class ( )

or Class ( ) when notified in writing by the Licensor, upon two-thirds vote of all the Companies operating under a similar License or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose. It shall be the particular and special charge of this Committee to consider any complaints which may be made by any member to the effect that the actual working of the classification under which any particular Company may be working is to the detriment of the others and to make recommendation which may tend to remedy such inequality, it being the intent that from time to time such measures as may be deemed equitable for the relief of any License, may be adopted as provided for. 1 2

(11) The following Companies shall be quoted ( ) per cent. discount from the prices established by the Licensor, on all schedules. EXCEPTIONS 3

The following Companies shall be quoted ( ) per cent. discount from the prices established by the Licensor, on all schedules. 4

(12) All terms, conditions, regulations and prices governed by this agreement now established by the Licensor and set forth in schedules attached to and made part hereof, subject to the differential selling discounts named in the preceding paragraph, shall be in force and effect

1 until other terms, conditions, regulations and prices are substituted, therefore by the Licensor
PRICES which substitution he is entitled to make from time to time, hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time; the Licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the prod-
2 ucts being manufactured under the patents enumerated.

(13) If at the end of the third month of the first year (said year beginning) ROYALTY it shall appear that the Licensee has during the REBATES first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit 95% of the amount originally
3 paid by the Licensee.

(14) At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

(15) In case of failure on the part of the Licensee to comply fully with the terms of this
4 PENALTIES agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

Penalties shall be deducted from all unpaid rebates at the rate of $1000.00 for each violation, and 75 per cent. of all penalties retained by the Licensor will be divided among the Licensees in good standing during the month, in proportion to the amount each Company's royalty bears to the amount to be divided. 1

(16) The restrictions herein contained, as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. No existing contracts for the sale of Enameled Ware extending beyond 1910, shall be recognized by the parties hereto. 2

EXPORT

(17) Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to any other License or its customers under a similar license.

(18) The License admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the License in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers or users of such non-li- 3 4

VALIDITY OF PATENTS

PROTECTION OF LICENSEE

censed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the License communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them.

(19) No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

LABELS

(20) This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further term of five years on conditions not less favorable than herein expressed.

(21) This agreement, however, may be cancelled, by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatever) of the License Agreement mentioned in first recital of the preamble hereof.

(22) IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

. . . . . .

. . . . . .

Class A Manufacturers	Net Prices	1
" B "	2½% discount	
" C "	5% "	

Schedule 1 First Grade Guaranteed Baths.
" 2 All other Grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks 1 and 2 Piece-Flat Rim Sinks

Schedules	1	2	3	4	
	Price Class				
Blairsville Enameled Ware Co.	C	A	C	B	
Barnes Mfg. Co., The	C	A	A	A	2
Cahill Iron Works, The	A	A	A	A	
Colwell Lead Co.,	C	A	B	B	
Clymer Mfg. Co.	C	B	C	B	
Day-Ward Co., The	C	A	B	B	
Humphryes Mfg. Co.,	C	A	B	B	
Iron City Mfg. Co.,	C	A	B	B	
Kohler Sons Co., J. M.	A	A	A	A	
Mott Iron Works, J. L.	A	A	A	A	
McVay & Walker	C	B	C	C	
McCrum-Howell Co.,	C	A	B	B	
National Sanitary Mfg. Co.,	C	A	B	B	3
Standard Sanitary Mfg. Co.	A	A	A	A	
Union Sanitary Mfg. Co.	C	A	B	B	
United States Sanitary Mfg. Co.	A	A	A	A	
Wolff Mfg. Co., L.	A	A	A	A	
Weiskittel & Son, A.	C	A	B	B	
Wheeling Enameled Iron Co.,	C	A	B	B	

4

1 Class A Manufacturers $1500.00 Monthly Royalty
" B " 1200.00 " "
" C " 800.00 " "

	Class—	*Monthly Royalty* A	B	C
	Blairsville Enameled Ware Co.			$800.
	Barnes Mfg. Co., The			$800.
	Cahill Iron Works, The	$1500.		
	Colwell Lead Co.,			800.
	Clymer Mfg. Co.			800.
2	Day-Ward Co., The		$1200.	
	Humphryes Mfg. Co.		1200.	
	Iron City Mfg. Co.	1500.		
	Kohler Sons Co., J. M.	1500.		
	Mott Iron Works, J. L.	1500.		
	McVay & Walker,			800.
	McCrum-Howell Co.		1200.	
	National Sanitary Mfg. Co.		1200.	
	Union Sanitary Mfg. Co.		1200.	
	United States Sanitary Mfg. Co.	1500.		
	Wolff Mfg. Co., L.	1500.		
3	Weiskittel & Son, A		1200.	
	Wheeling Enameled Iron Co.			800.
		$9000.	$7200.	$4800.

95% Rebate leaves 5% yearly—$12.600.00

4

PETITIONER'S EXHIBIT No. 110.

Filed Nov. 3, 1910.

J. L. Sullwold, Prest. & Secy.

THE WESTERN CO.
Sibley and Fifth Streets
Incorporated 1889

Jobbers of
Plumbers, Steam & Gas
Fitters Supplies.
Pumps,
Iron Pipe and Fittings,
Sanitary Specialities,
Radiators, Hose Goods.

Manufacturers of
The Saint Paul House
Heating Boiler
Soil Pipe & Fittings.

Saint Paul, Minn. June 7, 1910.

Mr. Edwin L. Wayman,
Pittsburgh, Pa.

Dear Sir:

As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask you for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

Yours very truly,
WESTERN SUPPLY CO.
Per J. L. SULLWOLD.

dict. J.L.S.

PETITIONER'S EXHIBIT No. 111.

Filed Nov. 3, 1910.

W-791022-I
July 9th, 1910.

Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

Dear Sir:—

Referring to our conversation in Chicago with reference to Jobbers' License Agreement. I had hoped to take the
2 matter up further with you the next day but was unable to locate you.

In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

> "If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the
> 3 Kohler Co. monthly. These amounts need not be itemized".

I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

I am very pleased to make your acquaintance and trust
4 we will become better acquainted in the future.

With kind regards and trusting that you reached home safely, I am,

Yours very truly,

PETITIONER'S EXHIBIT No. 112.

Filed Nov. 3, 1910.

J. L. Sullwold, Prest. & Secy.

THE WESTERN SUPPLY CO.

Sibley and Fifth Streets

Incorporated 1889

Jobbers of
Plumbers, Steam & Gas
Fitters Supplies.
Pumps,
Iron Pipe and Fittings,
Sanitary Specialities,
Radiators, Hose Goods.

Manufacturers of
The Saint Paul House
Heating Boiler
Soil Pipe & Fittings.

St. Paul, Minn. July 11, 1910.

Form 2

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

"Yours of the 9th. at hand and noted. I beg to state that the proposition outlined in your letters is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination."

We shall continue to use Kohler goods.

Yours respectfully,

Dict. J.L.S. (Signed) J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 113.

Filed Nov. 3, 1910.

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.
St. Paul, Minn.

Dear Sir:—

2 This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,

PETITIONER'S EXHIBIT No. 114.

3 Filed Nov. 3, 1910.

ATLAS SUPPLY COMPANY.
Muskogee, Oklahoma.

June 30th, 1910.

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

4 "Acknowledging your telegram of June 27th relative to the agreement covering Sanitary Licensed Enamel Ware. I have gone over this matter carefully with our people and have been advised under present conditions not to sign any contracts or agreements. Our prices conform with those of licensed manufacturers and should we decide to make any changes in them we will be glad to furnish you with our new selling prices".

Yours respectfully,
ATLAS SUPPLY COMPANY.
Per H. BOWSER,
Secretary & Treasurer.

PETITIONER'S EXHIBIT No. 115.

Filed Nov. 3, 1910.

ATLAS SUPPLY COMPANY
Muskogee, Oklahoma.

July 12th, 1910.

Mr. Edwin L. Wayman,
Arrot Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Acknowledging your favor of July 10th will say that I replied to your telegram of June 17th and fully explained our position in regard to the jobbers license agreement. This letter was not directed properly and was returned to us last Saturday, at which time we forwarded it to the proper address. Suppose you have received it by this time.

Yours respectfully,
ATLAS SUPPLY COMPANY
Per, H. BOWSER,
Secretary & Treasurer.

HPB/TW

PETITIONER'S EXHIBIT No. 116.

Filed Nov. 3, 1910.

POSTAL TELEGRAPH—COMMERCIAL CABLES.

Telegram

R125 g.w. 16
Muskagee Okla July 11' 10.
Edwin S. Lawman,
Arrott Bldg., Pgh—

Kansas City jobbers are quoting Kansas City resale price on enamel ware in Oklahama Irrespective to resale prices.

ATLAS SUPPLY CO 251p.

1 PETITIONER'S EXHIBIT No. 117.

Filed Nov. 3, 1910.

Pittsburgh, July 11, 1910.

Atlas Supply Co.,
Muskogee, Okla.

Please send me definite information, if possible, regarding Kansas City Jobbers prices in your territory. It would simplify situation if you would sign License Agreement regarding which I wrote you yesterday.

(Signed) E. L. WAYMAN.

2 Charge to E. L. Wayman, 1301 Arrott Bldg.

PETITIONER'S EXHIBIT No. 118.

3 Filed Nov. 3, 1910.

POSTAL TELEGRAPH COMMERCIAL CABLES

Night Lettergram

829 Ny. Ln. 24 N. L.
Muskogee, Okla., June 17th., 10.
E. L. Wayman,
Arrott Bldg., Pittsburg, Pa.

In event we execute license agreement will we be permitted to purchase ware from Kohler. Your wire received. Have Kansas City jobbers adopted the agreement.

4 ATLAS SUPPLY CO.—11:27 PM.

PETITIONER'S EXHIBIT No. 119.

Filed Nov. 3, 1910.

W-7101043-C

July 10, 1910.

Atlas Supply Co.,
Muskogee, Okla.

Gentlemen:—

I have not received reply to my telegram of June 17th. and letter of the 22nd., and would thank you to advise me if you can see your way clear to execute the Jobbers License Agreement on the terms contained therein; and also if you are maintaining the present re-sale prices.

Thanking you in advance for a reply, I am,

Yours very truly,

PETITIONER'S EXHIBIT No. 120.

Filed Nov. 3, 1910.

W-7151022-C

July 15, 1910.

Atlas Mfg. Co.,
Muskogee, Okla.

Gentlemen:—

Answering your letter of the 30th. ultimo, I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

Would you be willing to attend such a meeting if held in Chicago?

Yours very truly,

1 Filed Nov. 3, 1910.

PETITIONER'S EXHIBIT No. 121.

ATLAS SUPPLY COMPANY
Muskogee, Oklahoma,

June 18, 1910.

Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:—

2 Acknowledging your favor of June 16th., will say that since we opened up here a year ago this spring we have handled quite a bit of Kohler's Enamel Ware. Before we ordered our opening stock we corresponded with a number of the leading Enamel Ware manufacturers and tried to purchase material from them. A great many of them had their ware tied up with other jobbers, who had the exclusive sale of this territory and were therefore unable to supply us.

3 The Kohler people offered us a very nice proposition and we decided to handle their ware. They have used us very nicely and their goods have given excellent satisfaction, and we have worked up a very nice business, and were we to change our ware at the present time, it would mean quite a loss of business to us.

I have recent advise from the Kohler people, saying that they were willing to maintain the same price as licensed manufacturers. If they do this and we maintain re-sale prices I see no reason why we should not be allowed to purchase material from them.

4 When we wrote for prices to the different concerns for our opening stock we received quotations from several and at the price that they quoted us it would have been impossible for us to compete with other jobbers, as Crane Company and Kansas City jobbers were selling bath tubs, etc. at very near the price which some of the manufacturers wanted for the same material from us. The Kohler people have taken excellent care of us and have put us in position whereby we are on equal footing with other jobbers. For these and other reasons we do not feel like making a change at the present time.

We trust that you will see it in this light and that we may receive your permission to continue the present relation already established. 1

Yours respectfully,
ATLAS SUPPLY COMPANY,
Per H. P. BOWSER,
Treasurer.

H.P.B./T.W.

2

3

4

work. This tub, equipped in various ways, with either Bell Supply or Top Nozzle Fixture and with special porcelain pieces and with very heavy brass work, takes a price much higher than your schedule price to the plumber, and if we should bill this separate and apart we would be revealing to the plumber a vital point in our business which is necessary, in its maintenance, and would occasion a great deal of controversy and adjustment by him. We are perfectly willing to maintain a separate file, showing exactly the net price that this tub was sold at, for your inspection, but we do believe that the privacy of our business should not be invaded to that extent by the plumber. This same condition would apply, we believe, to Meyer-Sniffon, Federal Huber Co., of New York and The Peck Bros. & Co. of this city, and it presents a problem of difficulties, along with dangers, to our very existence. This same example which we give of the bath tub, is true of lavatories, and we would like your views as to this condition, which is vital with us. Bear in mind please, that there is absolutely no danger of our cutting prices as the expense of the conduct of our business is greater than the ordinary jobbers, from the fact that we maintain an architectural force as well as a draughtsman, and a showroom, so that we could not afford to sell goods on a basis of only 10% profit, as we understand some of the jobbers do. We are not after an immense volume of business but are after a particularly fine trade such as residences, the owners of which are willing to pay a higher price for specially high grade goods.

In the second place, J. M. Kohler Sons Co. have established a showroom in our city, which is very attractive, and they also have friends amongst the architects, who specify their material. If our friends amongst the plumbers ask us for price on a certain architect's specification, which calls for Kohler's goods, according to Paragraph 10, under the subject of Rebates, this is prohibited except by permission from you for each specific case. This is going to lead, we fear, to an endless amount of correspondence. Many times a price is asked immediately, and we would scarcely have time to get word to you, and get your permission, before the order would be placed.

Third, in many cases where contracts were placed with us for plumbing fixtures, delivery not being required until late June, July or even first of August, we had placed

the orders for these tubs with either The Standard Sanitary Mfg. Co. or The U. S. Sanitary Mfg. Co. for shipment at stated times. These orders were placed prior to our having had any knowledge of a Licensed Agreement, and the orders were acknowledged in the regular way. What is the status of these orders, with those two manufacturers, at the present time? If they ship them at the times which we designated they would, of course, be subject to the conditions prevailing at the time the order was placed, in our opinion, as our sales were made in accordance with the conditions at that time. We would also like an expression from you on this subject. 1

You will pardon the length of this letter but we wanted to place our situation clearly to you, in these details, and ask for your opinion as best how to handle them. Bear in mind that, at no time, would we ever be in danger of cutting prices or disturbing contracts. On the other hand, we would be one of your best selling agents to boost up the prices. 2

We would appreciate a very frank reply.

Very truly,

THE HOTCHKISS, VAIL & GARRISON CO.

EWH

3

4

1 PETITIONER'S EXHIBIT No. 124.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Received
June 20 1910

THE HOTCHKISS, VAIL &
GARRISON CO.

2 W-6171008-R

June 17, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York.

Gentlemen:—

Answering your esteemed favor of the 14th. would state that it is impossible for me to establish selling prices on goods not covered by the patents which I own. I have established selling prices on enameled iron ware, and al-
3 though it may work some hardships on the jobber in separating the billing of the fixture from the ware, I cannot under the circumstances do any thing different.

There is no objection to your getting better prices if possible than those established in sheets, but the conditions in general that have been established will not in my estimation effect you as much as indicated in your letter. The margin of profit established on enameled ware is from all reports received, greater than the jobbers have been in the habit of getting in the past few years. While I would like to accommodate you it is impossible to grant one jobber
4 concessions that cannot be granted others, and I believe if you will follow the prices, and conditions outlined that your results on your total business will be better in the next year than they have in the past.

As far as the Manufacturers who do not execute a license are concerned, would state that licensed manufacturers will give their jobbers every protection. I hope to be able to induce the Companies not licensed thus far to manufacture goods under the Patent of Processes, and I believe that I will succeed in the very near future. I hope

to meet some of the New York jobbers sometime next week, and hope I will be able to explain several points that on the face of them are not quite plain. 1

With reference to the orders you may have un-filled on your books, would state that it is the desire of the Licensed Manufacturers to support their jobbers in every way possible, and if you will furnish me a copy of these orders I will arrange the matter to your satisfaction.

I regret that I was not able to answer your letter sooner but in excess of mail at this particular time has prevented me giving the attention to each individual communication that it deserved.

Thank you for writing me, and trusting I may have the pleasure of seeing you in the near future, I am, 2

Yours very truly,

(Signed) E. L. WAYMAN.

3

4

1 PETITIONER'S EXHIBIT No. 125.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

W-5111002-1

May 11th. 1910.

This is to remind you that if you are not equipped with Automatic Apparatus for enameling that are covered by
2 the Patents in your License Agreement that you should take steps to install this equipment by June 1st. Will you kindly let me hear from you by return mail as to what you are now using and which patent you will operate under?

Yours very truly,

PETITIONER'S EXHIBIT No. 126.

Filed Nov. 3, 1910.

3 COPY

Do not write regarding more than one subject on this sheet.

UNION SANITARY MFG. CO.
Noblesville, Ind.

May 13th, 1910.

SUBJECT

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

4 Dear sir:

Your favor of the 11th, with reference to the Automatic Apparatus for enameling covering the patents in our license, will state that we are equipped at the present time for this arrangement.

Yours truly,
UNION SANITARY MFG. CO.
E. V. BRIGHAME,
Sec'y-Treas.

EVB

PETITIONER'S EXHIBIT No. 127.

Filed Nov. 3, 1910.

COPY

W-5161006-I

May 16th, 1910.

Mr. E. V. Brigham,
c/o Union Sanitary Mfg. Co.
Noblesville, Ind.

Dear sir:—

Replying to your letter of the 13th with reference to Automatic Apparatus for enameling, you state that you are equipped at present for this Arrangement, but do not state whether you are using Electric Power or Air. Kindly send me this information by return mail so that I can instruct the printer regarding the proper Labels to send you.

Yours very truly,

PETITIONER'S EXHIBIT No. 128.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

August 13, 1910.

To the Jobbing Trade:

My attention has been called to the fact that certain jobbers have allowed Plumbers to return to them the crates taken off of Enameled Ware, and have made them credit for these crates.

This is a violation of your Contract, and would be considered as cutting the price, and must not be done. Where a fixture is returned as defective, or for some other reason, you would, of course, allow the credit for the crate, the same as for the fixture. Where the crate is returned without the fixture, there must be positively no allowance made for same.

Yours very truly,

E. L. WAYMAN
Licensor.

1 **PETITIONER'S EXHIBIT No. 129.**

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-721010-C

July 2, 1910

Albert Weil, Sec'y & Treas.
Louis Lipp Company,
2 Cincinnati, Ohio.

Dear sir:—

Attached find copy of letter that I have written the Cincinnati Jobbers, which I trust will meet with your approval.

If it is possible for you and Mr. Lipp to come to Pittsburgh sometime next week I trust you will do so, and I have no doubt but what we could get together.

With kind regards and thanking you for the courtesies extended while in your city, I am

Yours very truly,
3 (Signed) E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 130.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building,
Pittsburgh

W-721009-C
July 2, 1910

Gentlemen:—

Although the Louis Lipp Co. has not signed the License Agreement, and are not operating under the Patent Processes, I understand that, until further notice they will quote on their goods the same prices that have been established on Licensed Ware. In the past it has been their custom in your city to ship Tub uncrated. They have agreed to discontinue this practice and will in the future, furnish Tubs crated, and will charge for crating.

Yours very truly,

PETITIONER'S EXHIBIT No. 131.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building,
Pittsburgh

W-6211005-1
June 21st, 1910

Mr. Albert Weil,
c/o The Louis Lipp Co.,
Cincinnati, O.

Dear sir:—

In reply to your letter of the 20th, I will try and arrange to call on you in Cincinnati some time next week.

I understand that Mr. Ahrens and Mr. Lipp are old friends and am writing Mr. Ahrens suggesting that he make arrangements to be in Cincinnati at the time when the proposition can be gone over by all of us.

Yours very truly,

(Signed) E. L. WAYMAN.

GOVERNMENT'S EXHIBIT 132—PART 1.

PETITIONER'S EXHIBIT No. 132—(Part 1).

Filed Nov. 3, 1910.

COMPARISON OF FURNACE REPORTS

NOTE: FIGURED ON BASIS OF 25 WORKING DAYS PER MONTH JUNE—10

Manufactures	Number Furnaces Owned	Total Capacity Furnace Days	Operated During Month Furnace Days	Per Cent of Capacity Operated	Per Cent of Capacity and Operation to Total Capacity and Operation all Licensees Capacity Operated		Per Cent of Capacity Operated in Proportion to Average Capacity Operated by all Licensees		Gross Royalty	Net Royalty
							Over	Under		
Barnes	3	75	52	69	1 50	1			260 00	52 00
Cahill	8	2 00	120	60	4	2 55		9	600 00	120 00
Colwell	3	75	52	69	1 50	1			260 00	52 00
Day Ward	6	1 50	52	34 50	3	1		34 50	260 00	52 00
Humphreys	5	1 25	48	46 50	2 50	1		22 50	240 00	48 00
Kerner	2	50	42	84	1	1	15		210 00	42 00
Mott	5	1 25	98	78 5	2 50	2	9 50		490 00	98 00
McVay Walker	4	1 00	52	52	2	1		17	260 00	52 00
McCrum Howell	8	2 00	118	59	4	2 50		10	590 00	118 00
National	5	1 25	104	84	2 50	2	15		520 00	104 00
Standard	89	22 25	1517	68	45 75	31 50		1	7585 00	1517 00
United States	8	2 00	197	98 50	4 25	4 50	29 50		985 00	197 00
Union	4	1 00	78	78	2	1 75	9		390 00	78 00
Wolf	35	8 75	739	84 50	18 50	14 50	15 50		3695 00	739 00
Weiskittle	7	1 75	75	43	3 50	1 50		26	375 00	75 00
Wheeling	3	75	11	14	1 50	0 20		55	55 00	11 00
Totals	195	48 75	3335		100	69			16775 00	3355 00

GOVERNMENT'S EXHIBIT 132—PART 3.

PETITIONER'S EXHIBIT No. 132—(Part III).

Filed Nov. 3, 1910.

COMPARISON OF FURNACE REPORTS

NOTE: FIGURED ON BASIS OF 25 WORKING DAYS PER MONTH AUGUST—1910

Manufactures	Number Furnaces Owned	Total Capacity Furnace Days	Operated During Month Furnace Days	Per Cent of Capacity Operated	Per Cent of Capacity and Operation to Total Capacity and Operation all Licensees Capacity Operated		Per Cent of Capacity Operated in Proportion to Average Capacity Operated by all Licensees		Gross Royalty	Net Royalty
							Over	Under		
Barnes	3	75	36	48	1 54	0 74		25 38	180 00	36 00
Cahill	8	2 00	108	54	4 10	2 21		19 38	540 00	108 00
Day Ward	6	1 50	26	17 3	3 08	0 53		56 08	130 00	26 00
Humphreys	5	1 25	50	40	2 57	1 02		33 38	250 00	50 00
Kerner	2	50	54	100	1 02	1 10	26 62		270 00	54 00
Mott	5	1 25	130	100	2 57	2 66	26 62		650 00	130 00
McVay Walker	4	1 00	...	...	2 05	..	.. ..		... ..	... ..
McCrum Howell	8	2 00	78	39	4 10	1 61		34 38	390 00	78 00
National	5	1 25	85	68	2 57	1 74		5 38	425 00	85 00
Standard	89	22 25	1846	83	45 64	37 89	9 62		9230 00	1846 00
United States	8	2 00	176	88	4 10	3 61	14 62		880 00	176 00
Union	4	1 00	81	81	2 05	1 66	7 62		405 00	81 00
Weiskittle	7	1 75	78	44 5	3 59	1 61		28 88	390 00	78 00
Wheeling	3	75	8	10 6	1 54	0 16		62 78	40 00	8 00
Wolf	35	8 75	761	87	17 94	15 61	13 62		3805 00	761 00
Colwell	3	75	60	80	1 54	1 23	6 62		300 00	60 00
Totals	195	48 75	3577		100%	73 38			17885 00	3577 00

PETITIONER'S EXHIBIT No. 134.

Filed Nov. 3. 1910.

No. 633,941 Patented Sept. 26. 1899.

J. W. ARROTT, Jr.

DREDGER FOR PULVERULENT MATERIAL.

(Application filed Mar. 21. 1898.

(No Model.)

Fig 1

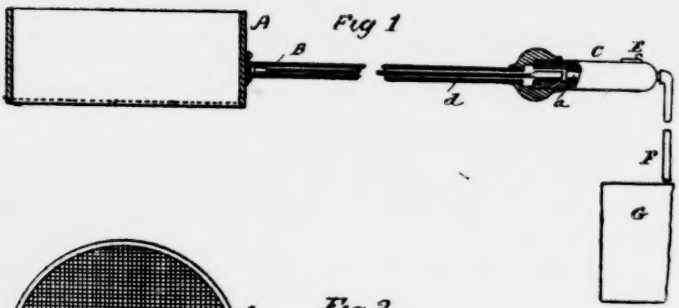
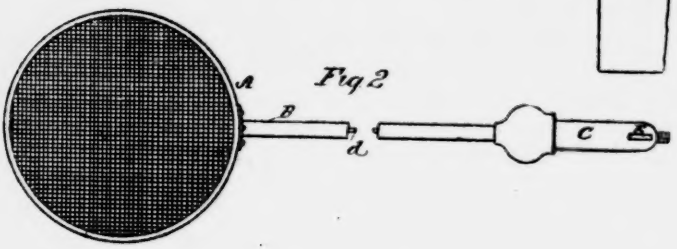


Fig 2



WITNESSES

James W. Arrott Jr.

INVENTOR

By Connolly Bros

Attorneys

1 UNITED STATES PATENT OFFICE.

James W. Arrott, Jr., of Allegheny, Pennsylvania—

Dredger for Pulverulent Material.

Specification forming part of Letters Patent No. 633,941, dated September 26, 1899—Application filed March 21, 1899—Serial No. 709,945. (No model.)

To all whom it may concern:

Be it known that I, JAMES W. ARROTT, Jr., a citizen of the United States, residing at Allegheny, in the county of
2 Allegheny and State of Pennsylvania, have invented certain new and useful Improvements in Dredgers for Pulverulent Material; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bath-tubs and other vessels, commonly known to the trade as "dredgers."

3 The ordinary dredger consists simply of a sieve or other screen of proper mesh having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not freely pass through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredger with the hand or with some instrument held in the hand by tapping or striking the dredger or by striking the dredger against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow and requires considerable skill in manipulating the dredger so as to insure an even delivery of the enameling material.

4 The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate

within the latter and strike the end or side of the dredger with every forward stroke. 1

In the accompanying drawings, Figure 1 is a longitudinal sectional view of a dredger constructed according to my invention, and Fig. 2 is a top view of the same.

A designates the sieve or sifter, consisting of a box-like receptacle or trough having a wire-cloth screen at the bottom, through which the enameling material is shaken.

B designates a tubular handle consisting of a section of pipe attached to the end of the sifter.

C designates the body or casing of the pneumatic hammer, coupled to the end of the handle and of any suitable construction. 2

The piston *a* is either extended through the handle or is connected to a rod *d*, which operates in unison with the piston and which may be formed with enlargements at the ends to fit the bore of the handle and the end of the casing. The end of the handle next to the dredger is plugged to receive the stroke of the rod or piston. The air-tube F, leading from a compressed-air reservoir G, which is preferably flexible, is coupled to the outer end of the casing, and a suitable valve E is provided within easy reach of the workman to control the admission of air and regulate the force of the blow. 3

By the use of this device the operator is enabled to distribute and deposit the enamel more quickly and evenly and has the use of both hands to carry and manipulate the dredger, relieving him of a great deal of hard work and enabling him to turn out more work in a given time than is possible by the use of the present style of dredger.

I am aware that jarring or vibrating devices have been used in stationary apparatus used for sifting materials, and I disclaim any application of my invention to such purposes; but in the operation of the application of enamel in the powdered form the dredger or sifter has always been carried by the operator in one hand, while the necessary jar to produce sifting was communicated either to the handle of the sifter or to the sifter itself by some instrument in the other hand, or in some instances the sifter is held in both hands by one operator, while an assistant produced the necessary jar to cause sifting, and it is to this class of apparatus and operations that my invention relates and applies. 4

The pneumatic hammer forming part of the agitators is of the ordinary and well-known construction in which the piston has a rapid reciprocating motion automatically produced by the action of compressed air.

Having thus described my invention, what I claim as new is—

1. A dredger or sifter consisting of a screen or sieve and a supporting-handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve substantially as described.

2. A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described.

3. A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto with means for controlling the operation of said agitator, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

JAMES W. ARROTT, Jr.

Witnesses:
GEO. W. CRAIG,
E. F. GREGG.

PETITIONER'S EXHIBIT No. 135.

Filed Nov. 3. 1910.

E. DITHRIDGE.

PNEUMATIC SIEVE.

APPLICATION FILED APR. 1. 1909.

949,625. Patented Feb. 15, 1910.

Fig. 1.

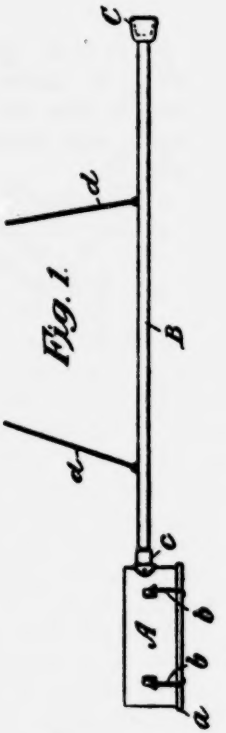


Fig. 2.

Attest:
W. Dr. Gunn
A. A. Hachli

Inventor:
by W. P. Preble Jr & Co Atty.

1 UNITED STATES PATENT OFFICE.

EDWARD DITHRIDGE, OF MORRISVILLE, PENNSYLVANIA, ASSIGNOR TO THE J. L. MOTT IRON WORKS, A CORPORATION OF NEW YORK.

PNEUMATIC SIEVE.

Specification of Letters Patent.

949,625. Patented Feb. 15, 1910.

2 Application filed April 1, 1908. Serial No. 424,496.

To all whom it may concern:

Be it known that I, EDWARD DITHRIDGE, a citizen of the United States of America, and a resident of Morrisville, in the county of Bucks and State of Pennsylvania, have invented certain new and useful Improvements in Pneumatic Sieves, of which the following is a specification.

The object of my invention is to provide a pneumatic sieve of exceedingly simple construction; which can be 3 very readily and easily handled; and the action of which, in delivering its contents, can be very readily and easily controlled.

My invention relates more particularly to that class of sieves which is commonly known as a dredger, that is to say, a sieve which is designed to receive material of uniform size and to sift, sprinkle or discharge the same upon some object which it is designed to coat or cover. Such sieves have long been used in the enameling of bath tubs and other castings in which case the material to be sifted consists of dry powdered enamel. This enamel is sprinkled 4 dry over the surface of a red-hot tub or other casting, and fuses with the heat of the article to which it is applied. My invention, however, is applicable with advantage to other styles of sieves, namely, those in which materials of different seizes are to be assorted by jarring the contents of the sieve so that the smaller particles fall through, and is also applicable to foundry sieves in which sand for molding purposes has to be repeatedly sifted between the breaking up of old molds and the forming of new ones. It is also applicable with advantage to flour bolts, and, in

fact, to all sifting apparatus where the desired effect can 1
be produced by a constant slight trembling or shaking of the sieve and its contents. In devices heretofore used for this purpose, where the body of the sieve was not itself moved back and forth so as to disturb the contents and keep them in motion, the necessary jar for keeping the meshes of the sieve from clogging and to cause the material to flow as desired through the sieve has been caused by some form of automatic or pneumatic tapper or hammer which operated mechanically or pneumatically to strike the side of the sieve with such force and such frequency as experience showed the particular purpose in view re- 2
quired. When such automatic or pneumatic means were not employed the blows were given by a hand hammer or beater which had the advantage over the automatic or pneumatic tapping that it could be instantly stopped whenever occasion arose. When such automatic or pneumatic tappers were employed they were attached or secured to, and consequently carried by, the sieve or the sieve handle or the frame-work supporting the sieve, and sometimes this was the case also with the hand tapper.

Among the disadvantages inherent in having the hammer or agitator or beater or tapper or whatever it may be 3
called secured to or carried by the sieve or dredger or anything rigidly connected with it, I have found the following: It is difficult and sometimes impossible to stop the blows suddenly. It is difficult to vary and control the force of the blows. When either the tapper or the sieve gets out of order the apparatus is out of commission until repairs are made. The motive power has to be stopped in order to stop the flow of material from the sieve. There are other disadvantages. To overcome these disadvantages, and to combine the advantages of an automatic or pneumatic tapper with those of the old hand tapper, I provide an 4
apparatus in which the tapping device is not carried or in any way attached to or secured to the sieve, but is entirely separate from it as was the case with the old hand tapper. Yet the sieve is so constructed that it can be operated by the aid of a pneumatic hammer or any other power-driven automatically-operating device so as to take advantage of the rapidity of succession in the taps administered.

In carrying out this invention, therefore, I provide a

1 sieve or sifting apparatus which is complete in itself and which is adapted to receive the necessary taps from any suitable tapping device, power-driven or hand-operated. And I provide a power-driven tapper, preferably a pneumatic hammer, of a size and weight adapted to be conveniently held in the hand of the workman, and to be brought into contact with said sieve whenever a tapping action is desired.

When my improved pneumatic sieve is used for enameling bath tubs it is preferable to have the handle of the sieve supported by chains or otherwise from the ceiling of the
2 foundry or other fixed support in sufficient proximity to the cradle on which the tubs are deposited on removal from the furnace so that the enameler does not have to support the weight of the sieve at all, but simply guides it over the turning tub as occasion requires by controlling its movements through grasping the end of the long handle. When the sieve is used on small ware so that less enamel is required for the coat and the operative is not exposed to such an extense radiation of heat, the sieve may be small enough and light enough to carry in the hand and not require this outside or over-head support.

3 In the accompanying drawings I have shown a simple form of my improved device.

Figure 1 is a side elevation of the sieve. Fig. 2 is a side elevation of an ordinary pneumatic hammer such as used for many purposes, including the chipping of bath tubs when provided with a suitable chisel or chipping tool, and showing a part of the air supply pipe.

I use this without any chisel or substitute therefor because the tapping which I employ does not consist of positive blows delivered against the side of the sieve as has heretofore been the case, but is more in the nature of a
4 vibration or a succession of shaking or trembling undulations passing molecularly through the substance of the handle and sieve, from which they are delivered to the material in the sieve. The molecular agitation of this material thereby becomes sufficient to cause it to flow steadily through the meshes of the sieve. This flow lasts while the agitation lasts, stops when the agitation stops, and varies with the amount of agitation which is easily controlled.

A is a sieve of suitable construction which, as usually employed for enameling bath tubs, is a drum-shaped body

of circular form made of metal with a mesh of fine wire stretched over the bottom and drawn tight by means of the band *a*, and screw-threaded rods *b*, *b*, in the usual way. B is a handle, preferably solid and of wood, although a hollow metal handle or a metal handle filled with wood might be substituted, if preferred. This handle is attached to the sieve by a suitable socket *c*, and is preferably suspended from the ceiling or other fixed support by chains, cords, or wires *d*, *d*. There is nothing new about this part of the construction, the handle being old and the sieve being old, as well as the means for tightening the sieve mesh and for attaching the handle to the sieve. 1

The novelty of my improved sieve consists in providing a cup C, which is attached to any convenient part of the sieve handle, preferably at the extreme end, as shown. By the addition of this cup the sieve becomes adapted for operation by any suitable hammer or beater whether electric, pneumatic, hydraulic, or driven by steam or any mechanical power. 2

D represents a pneumatic hammer or tool of usual construction and may be any of the usual and well-known types, which have been put upon the market, in which an internal agitation is produced by the rapid driving back and forth in the interior of the hammer of a piston or other moving part by the admission and exhaust of air or any suitable gas. Sometimes these hammers have a valve and sometimes they are valveless. As heretofore used such hammers have been provided with some kind of a tool such as a chisel, a gouge, a bit, a hammer-head, or some other device the shank of which enters the nozzle of the hammer and receives the blows of the reciprocating piston. In my use of these hammers I dispense with any such auxiliary tool as I do not utilize or desire to use any direct pounding action but simply the molecular vibration caused by the rapid reciprocation of the piston back and forth inside the hammer, which vibration is communicated to the wooden handle from the air inside of the hammer, which air enters through the flexible tube *e*. 3 4

The cup or funnel C, serves chiefly as a guide or rest for the nozzle of the hammer or other beating device, and the interior, therefore, may be tapered as shown in dotted lines so as to present a recess of such size and shape as to permit the nozzle to enter and to be withdrawn easily. It

PETITIONER'S EXHIBIT No. 136.

Filed Nov. 3. 1910.

W. LINDSAY.

ENAMELING POWDER DISTRIBUTER.

APPLICATION FILED JULY 6, 1909.

939,918. Patented Nov. 9, 1909.

Fig 1

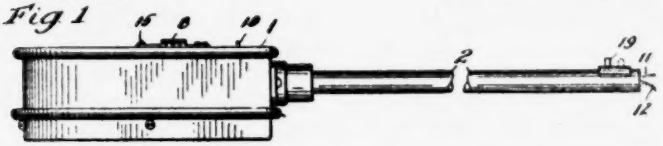


Fig. 2

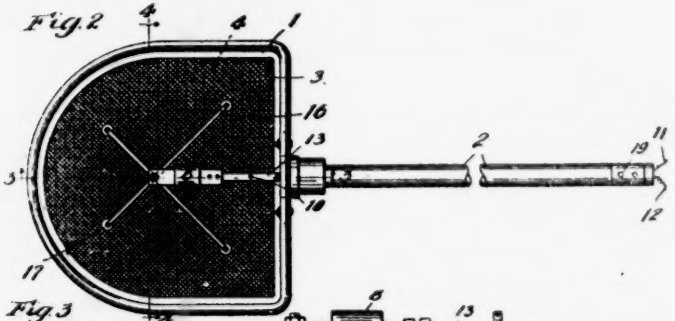


Fig 3

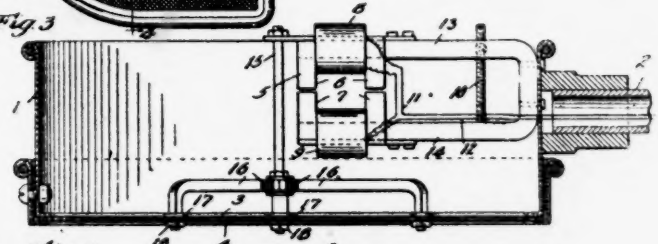
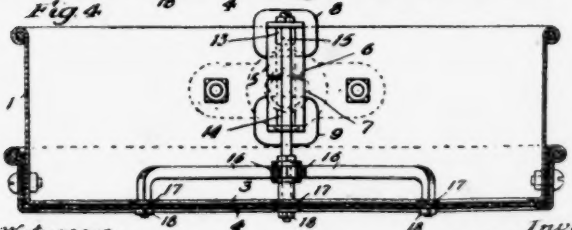


Fig 4.



Witnesses:
Wm Geiger
H. Whitney

Inventor:
William Lindsay
By Munday, Evarts, Adcock & Clarke
Attorneys

UNITED STATES PATENT OFFICE.

WILLIAM LINDSAY, OF CHICAGO, ILLINOIS.

ENAMELING-POWDER DISTRIBUTER.

Specifications of Letters Patent.

939,918. Patented Nov. 9, 1909.

Application filed July 6, 1909. Serial No. 505,982.

To all whom it may concern:

Be it known that I, WILLIAM LINDSAY, a citizen of the United States, residing in Chicago, in the county of Cook and State of Illinois, have invented a new and useful Improvement in Enameling-Powder Distributers, of which the following is a specification.

My invention relates to devices for sifting powdered enameling material over the surface of bath tubs and other vessels in the manufacture of enameled iron bath tubs or other articles.

Heretofore in sifting and distributing enameling powder over heated bath tubs or other vessels to be enameled, the whole sifter including the body or vessel and its long handle has been generally shaken by a pneumatic hammer operating to rapidly tap upon the handle of the sifter; and considerable difficulty, annoyance and discomfort are experienced by the operator, owing to the constant and rapid vibrations to which the instrument which he holds in his hands is subjected, the same also rendering it difficult for the workman to properly and evenly distribute the enameling powder. The necessity of shaking or vibrating the whole sifter and its contents also materially increases the power necessary for the work.

The object of my invention is to provide an enameling powder distributing device in which the sifter vessel itself, (including the handle thereof) will be free from vibration, thus rendering it more convenient and comfortable for holding in the hands, and also enabling the workman to have better control over the sifting operation, and also enabling the work to be done with a minimum of power.

My invention also consists in the novel construction of

parts and devices and in the novel combinations of parts and devices herein shown and described.

In the accompanying drawing forming a part of this specification, Figure 1 is a side elevation of an enameling powder distributing device embodying my invention. Fig. 2 is a plan view. Figs. 3 and 4 are sections on lines 3—3 and 4—4 of Fig. 2.

In the drawing, 1 represents an enameling powder container having the customary long handle 2, preferably rigidly secured thereto, by which the workman holds the container in his hands and moves it about over the hot bath tub or other article to be enameled. The container 1 is provided with a fine mesh wire sieve bottom 3, and also below said sieve or distributer bottom 3 with a flexible coarse mesh wire support 4 for said sieve or distributer bottom 3.

Mounted rigidly upon the container 1 and preferably inside the same and above the sieve or distributer bottom 3, I mount an electromagnet 5, preferably of horse shoe type, and adapted to have its two poles 6, 7 momentarily brought in contact to break the electric circuit. The two arms of the electromagnet have the customary windings 8, 9 and are also furnished with an adjusting screw 10 for regulating and adjusting the distance apart of the poles 6, 7.

11, 12 are the electric circuit wires connecting with the windings 8, 9 on the cores or arms 13, 14 of the electromagnet. The horse shoe electromagnet is preferably vertically arranged or substantially at right angles to the plane of the sieve or distributor bottom 3 of the container. The movable member armature or pole of the electromagnet, preferably the upper pole, is connected to the flexible coarse wire support 4 by means of a rod or other connection 15, preferably having a plurality of divergent arms 16 at its lower end furnished with buttons 17 to bear upon the sieve or distributer bottom 3 and with nuts 18 which clamp the flexible wire coarse mesh support 4 to the connection 15, and thus cause minute up and down vibrations to be communicated thereto and to the fine mesh wire sieve bottom 3 and to the enameling powder in the container by the action of the electromagnet. The electric circuit is preferably an alternating one, as this renders unnecessary any contact maker or breaker other than the poles of the electromagnet because with an alternating

current the reversing of the current also reverses the polarity of the limbs of the horseshoe magnet, and at the minute interval between each reversal the limbs of the magnet are left substantially without polarity or magnetic property so that they tend to spring back to their normal position, or their position when the current is entirely cut off. The handle of the container is preferably furnished with an electric switch 19 for connecting and disconnecting the electric current. 1

The coarse wire mesh support 4 is made of a large comparatively stiff though slightly flexible wire, preferably of 20 gage and the mesh is preferably about one quarter inch mesh so as to give support to the fine mesh wire sieve bottom 3 of the container at numerous points and communicate to said fine wire mesh sieve bottom the extremely minute and rapid vibrations imparted to the wire support 4 by the electromagnet. 2

The sieve bottom 3 is preferably of very fine wire about No. 33 wire gage and it is preferably of about 40 mesh or 40 wires to the inch. The mesh of the sieve bottom 3 may, however, be varied according to the nature of the enameling powder to be sifted.

I claim:— 3

1. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath-tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet having a movable member and a connection between the movable member of the electromagnet and said coarse mesh support, substantially as specified.

2. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet having a movable member and a connection between the movable member of the electromagnet and said coarse mesh support, said connection having a plurality of divergent arms, substantially as specified. 4

1 3. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse-shoe type, and one of its poles being a movable member to which said connection is attached, substantially as specified.

2 4. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse shoe type, and one of its poles being a movable member to which said connection is attached, and an adjusting means between the two arms of said horse shoe magnet, substantially as specified.

3 5. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse shoe type, and one of its poles being a movable member to which said connection is attached, and an alternating current
4 electric circuit for said magnet to cause the limbs of said magnet to be alternately and reversely polarized at each reversal of the current, substantially as specified.

6. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable

member of the magnet and said support, substantially as specified. 1

7. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable member of the magnet and said support, said electromagnet being a horse shoe one arranged in a vertical plane in the container above said support, substantially as specified.

8. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable member of the magnet and said support, said electromagnet being a horse shoe one arranged in a vertical plane in the container above said support, and an alternating electric circuit for said magnet, substantially as specified. 2

WILLIAM LINDSAY.

Witnesses:

EDMUND ADCOCK,

H. M. MUNDAY. 3

4

1 PETITIONER'S EXHIBIT No. 137.

Filed Nov. 3, 1910.

Exhibit A-7

COPY.

EDWIN L. WAYMAN.

W-6181013-R
June 18, 1910.

Chandler Pump Company,
Cedar Rapids, Iowa.

2 Gentlemen:

I am in receipt of your telegram of to-day stating that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market.

Will you not telegraph me upon receipt of this letter
3 that you will execute the agreement in order that the matter may be adjusted in your city at once.

Yours very truly,

E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 138.

Filed Nov. 3, 1910.

BAILEY-FARRELL MFG. CO.
Third. Ave. and Ross Street.
Pittsburg, Pa.
June 1, 1910

Order No. C 2309

Day Ward Co.,
Warren, O.

Please ship us at once via

3-20x30 plate 1045 roll rim sinks with right hand end piece, less bibbs, air chambers and trap.

Send bill and bill lading to this office promptly. Advise of receipt of order and date shipment will be made Mark number of this order on your bill.

Acknowledged .....

Wrote	*Shipment Promised*
6/28	

Rec'd Invoice.....

Received on this Order.

.....

.....
Ordered for

1 **PETITIONER'S EXHIBIT No. 139.**

Filed Nov. 3, 1910.

All Agreements Contingent upon Strikes, Accidents and other Causes Beyond our Control.

GOOD
ENAMELED WARE

W. C. Winfied, Pres.
A. G. Ward, Vice Pres.
2 Geo. E. Day, Sec. and Treas.

Code: Western Union
Cable Address "Dayward"
Telephones.
Bell No. 324. Independent No. 24.

THE DAY-WARD CO.
Warren, Ohio, U. S. A.

June 6th, 1910.

Bailey-Farrell Mfg. Co.
Pittsburg, Pa.

Gentlemen:—

We acknowledge receipt of your order #2309 of June 1st.

3 In regard to this order, would say that owing to the earnest solicitation of the Jobbers to establish a resale price, we, as well as the other Manufacturers, agreed not to take any business beyond June 1st, so that the resale price could be put into effect at that time.

Under our agreement and terms with the Licenses, we are not permitted to fill this order at any other price than that mentioned in the Jobbers' Agreement which we mailed you Saturday. If this is satisfactory, kindly sign this Agreement and return to us, and we will fill the order.

Would advise that we are today writing a large number
4 of our customers practically along the same line as this. Would also say that the success of the Resale Agreement, to a great extent, depends upon the hearty co-operation of the Jobbers. It will perhaps be a little hard the first thirty or sixty days in getting it started, but with your co-operation, as well as that of the other Jobbers, we think there is no reason why this will not go through.

Yours truly,
THE DAY-WARD CO.
Per A. G. WARD.

W/F

PETITIONER'S EXHIBIT No. 140. 1

Filed Nov. 3, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths
and
Plumbing Goods.

General Offices
Arrott Building.

Works,
Monaca, Pa.

Pittsburgh, Pa. June 7, 1910.

The Bailey-Farrell Mfg. Company, 2
Pittsburg, Pa.

Gentlemen:

We received in this mornings mail your order #2389, but as we have not as yet received your signed license contract and our license agreement with Mr. Wayman makes it imperative that we receive this contract before entering any orders, we cannot enter this order until we receive same.

Yours very truly,
UNITED STATES SANITARY MFG. CO.

A. H. CLINE, Jr. 3
Secretary.

AHC-R.

4

1 **PETITIONER'S EXHIBIT No. 141.**

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

Feb. 7, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

2 Referring to the informal discussion that took place after the Regular Meeting regarding Re-sale Prices and License Arrangement.

Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this Arrangement. If such is the case will you kindly send me the following information as quickly as possible?

Schedule of Patents

Pat. Number	*Date*	*Inventor*	*Title*

3 *Applications— not issued*

Docket Number	*Serial Number*	*Title*

In order to get a preliminary statement of each Manufacturer's ideas, will you kindly write me regarding the following:

1. Using the Standard Sanitary Mfg. Co.'s published prices as a basis, what differential, if any, do you believe your Company would require in order to obtain its fair share of the business?

Preferential Discount

4 Schedule 1. First Grade 5 year Guaranteed Baths

" 2. All other Grades of Baths.

" 3. Small Ware—Lavatories, etc.
(Note: On what competitive types of Lavatories do you feel you could get the same price as the Standard.)

Schedule 4. Sinks—F.R. and R.R.

2. How many active furnaces do you anticipate operating the balance of the year. This information is necessary in order to figure out the total amount of royalty.

Thanking you in advance for this information as promptly as possible, I am,

(Signed) E. L. WAYMAN.

Preferential Selling Discounts to Jobbers asked for by the various Manufacturers.

Schedule 1—5 year Guaranteed Baths.
" 2—2 "
" 3—All other Grades of "
" 4—Small Ware—Lavatories, etc.
" 5—Sinks—R.R. & F.R.

Manufacturers	Schedules 1	2	3	4	5
Standard	None	None	None	None	None
Wolff	"	"	"	"	"
U. S.	"	"	"	"	"
Kohler	"	"	"	"	"
Union	"	"	"	"	"
Mott					
Colwell	"	"	"	"	"
Barnes	"	"	"	"	"
Cahill					
Clymer	"	"	"	5	5
Blairsville	5	5	5	5	5
McVay & Walker	5	5	5	5	5
Weiskittel	5	5	5	5	5
National	5	None	None	5	2½
Iron City					
Humphryes					
Day-Ward					
McCrum-Howell	5	2½	None	5	None
Wheeling	?	?	?	?	?

	Patent. No.	*Date*	*Inventor*	*Title*
Barnes Mfg. Co.	838,702	Dec. 18-1906		1. Boltless Sink Strainer and Coupling.
	945,457	Jan. 4-1910		2. Sink Strainer.
	846,022	Mar. 5-1907		3. Conc. Hanger

PETITIONER'S EXHIBIT No. 142.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W-2251009-1
Feb. 25th, 1910.

Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

Can you attend a Meeting next Wednesday Morning at Chicago of the Companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the Special Meeting of all the Companies which is to be called the first part of next month at New York regarding Licenses and Re-sale Prices?

The market conditions are such that this matter ought to be settled without further delay and I would thank you to telegraph me not later than Monday if you can attend.

Yours very truly,

(Signed) E. L. WAYMAN.
Commissioner.

Copies to

H. M. Hoelscher,	L. Wolff Mfg. Co.
F. J. Torrance,	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.	U. S. Sanitary Mfg. Co.
W. J. Kohler,	J. M. Kohler Sons Co.
H. T. Gates,	McCrum-Howell Co.
J. B. Murphy,	J. M. Kohler Sons Co.

PETITIONER'S EXHIBIT No. 143.

Filed Nov. 4, 1910.

In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price deferentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement.

Such an arrangement would not interfere with the Association as it exists or the purpose for which is was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation. It would be my idea to create a list of preferentials for the various Companies from a standard price list and these preferentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

I have taken this matter up with some of the companies verbally and they are very much in favor of it. Will you kindly look over the attached papers and let me have your ideas in the matter as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I will arrange to call a meeting for those interested with the idea of putting the matter into a working arrangement.

"PROPOSED ARRANGEMENT FOR LICENSED MANUFACTURERS."

The execution of a License Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Air and Electric Dredges.

The manufacturers to be divided into three classes according to the proportion their business bears to the whole and to execute licenses to be known as follows and on the following terms:

"Class A	Manufacturers	License	Royalty	$1500. per month.
Class B	"	"	"	1200. per month.
Class C	"	"	"	800. per month.

At the end of the third month the above royalties, subject to 95% rebate if the terms of the license have been complied with and at the termination of each succeeding month a like rebate.

75 per cent. of the penalties deducted from the manufacturers violating the agreement, to be divided among the Licensees in good standing for the month in proportion to the sum each Company's royalties bear to the whole.

The division of the ware into four schedules as follows:

Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Pieces, Flat Rim Sinks.

Price preferentials to be arranged something like the following:

Class A	Manufacturers	Net Prices
" B	"	2½% discount
" C	"	5% "

Schedule 1 First Grade Guaranteed Baths
" 2 All other Grades of Baths
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks 1 and 2 Piece-Flat Rim Sinks.

Schedules	1	2	3	4
	Price Class			
Blairsville Enameled Ware Co.	C	B	C	B
Barnes Mfg. Co., The	C	B	A	A
Cahill Iron Works, The	A	A	A	A
Colwell Lead Co.,	C	B	B	B
Clymer Mfg. Co.,	C	B	C	B
Day-Ward Co., The	C	A	B	B
Humphryes Mfg. Co.,	C	A	B	B
Iron City Mfg. Co.	C	A	B	B
Kohler Sons Co., J. M.	A	A	A	A
Mott Iron Works, J. L.	A	A	A	A
McVay & Walker	C	C	C	C
McCrum-Howell Co.,	C	A	B	B
National Sanitary Mfg. Co.,	C	B	B	B
Standard Sanitary Mfg. Co.	A	A	A	A

Union Sanitary Mfg. Co.,	C	A	B	B	1
United States Sanitary Mfg. Co.	A	A	A	A	
Wolff Mfg. Co., L.	A	A	A	A	
Weiskittel & Son, A.	C	A	B	B	
Wheeling Enameled Iron Co.	C	A	B	B	

Class	A	Manufacturers	$1500.00	Monthly	Royalty
"	B	"	1200.00	"	"
"	C	"	800.00	"	"

	Monthly Royalty			
Class—	A	B	C	
Blairsville Enameled Ware Co.			$800.	2
Barnes Mfg. Co., The			800.	
Cahill Iron Works, The	$1500.			
Colwell Lead Co.,			800.	
Clymer Mfg. Co.			800.	
Day-Ward Co., The		$1200.		
Humphryes Mfg. Co.		1200.		
Iron City Mfg. Co.	1500.			
Kohler Sons Co., J. M.	1500.			
Mott Iron Works, J. L.	1500.			
McVay & Walker,			800.	
McCrum-Howell Co.,		1200.		3
National Sanitary Mfg. Co.,		1200.		
Union Sanitary Mfg. Co.		1200.		
United States Sanitary Mfg. Co.	1500.			
Wolff Mfg. Co., L.	1500.			
Weiskittel & Son, A.		1200.		
Wheeling Enameled Iron Co.			800.	
	$9000.	$7200.	$4800.	

95% Rebate leaves 5% yearly=$12,600.00

The publication of a Standard Loose Leaf Price Book by the Licensor. 4

The proposed arrangement with reference to royalties would aggregate a total net amount to the Licensor of $12,600, yearly to cover the expense of salary, traveling, printed matter and office expense, in accordance with the attached sheet.

1 THIS AGREEMENT, Made in duplicate this day of by and between E. L. Wayman, a resident of the City of Pittsburgh of the State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH:

2 THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive Class ( ) license to make and sell Sanitary Iron Enameled Ware under the following United States Letters Patents, to wit:
upon the terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND, WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters
3 Patent,
for the manufacture and sale of the Licensor's

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive license to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell
4 goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

CLAIMS The Licensor hereby agrees to suspend his claims against the Licensee and its customers for damages or profits which he may be entitled to receive for any claim for any past infringe-

ment of said patents by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract. 1

So long as the Licensee operates under this license or any renewal thereof and keeps and performs all of the obligations of said Licensee herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, methods or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and for which patents have already been issued to said Licensor, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof. 2

ROYALTIES

The Licensee shall pay the following royalties for License herein granted, to wit:
Class A License $1500. per month.
Class B License $1200. per month.
Class C License $ 800. per month, payable on or before the 5th day of each month as follows: 5% in cash, 95% in 60 days promissory notes without interest. 3

CHANGE OF LICENSE CLASS

This agreement is entered into as a Class ( ) License, but may be changed to either Class ( ) or Class ( ) when notified in writing by the Licensor, upon two-thirds vote of all the Companies operating under a similar License or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose. It shall be the particular and special charge of this Committee to consider any complaints which may be made by any member to the effect that the actual working of the classifications under which any particular Company may be working is to the detriment of the others and to make recommendations which may tend to remedy such inequality, it being the intent that from time to time such measures as may be deemed equitable 4

for the relief of any Licensee, may be adopted as provided for.

All terms, conditions, regulations and prices governed by this agreement now established by the Licensor and set forth in schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted, therefore by the Licensor which substitution he is entitled to make from time to time, hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time; the Licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the products being manufactured under the patents enumerated.

PRICES

If at the end of the third month of the first year (said year beginning) it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit; 95% of the amount originally paid by the Licensee. At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

ROYALTY REBATES

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

PENALTIES

Penalties shall be deducted from all unpaid re-

bates at the rate of $1000.00 for each violation. 1

The restrictions herein contained, as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. No existing contracts for the sale of Enameled Ware extending beyond January 1st, 1910, shall be recognized by the parties hereto.

EXPORT

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to any other License or its customers under a similar license. 2

The License admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents or any of them.

VALIDITY OF PATENTS

The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the License in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any such parties either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the License communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 3

PROTECTION OF LICENSEE 4

1

LABELS

No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all good made hereunder and sold by the Licensee.

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless

2

previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further term of five years on conditions not less favorable than herein expressed.

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants

3

herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

.....

.....

4

1. This Agreement is entered into as a Class ( ) License with Selling Price Preferentials as follows:

Selling discounts from prices established by the Licensor.

Schedule 1 First Grade Guaranteed Baths
" 2 All other grades of baths.
" 3 Small Ware—Lavatories, etc.
" 4 R. R. Sinks and 2 piece Flat Rim Sinks

2. Subject to the provisions hereinbefore named.

3. And 75 per cent. of such penalties will be divided among the Licenses, in good standing during the month, in proportion to the sum each Company's royalty bears to the whole.

PETITIONER'S EXHIBIT No. 144.

Filed Nov. 4, 1910.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at Sheboygan, Wisc.
48.ch.5pm.od.z.100 paid.

Ht—New York City, N. Y. Mar. 29-10. foned 519 P. M.
Walter J. Kohler, Pres. J. M. Kohler Sons Co., City. "L."

All manufacturers except you and Weiskittel Represented at meeting Weiskittel here to-night fifteen members here in person balance by letters and wire after thorough consultation with attorney Jackson of Noble Jackson, and hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years sense of meeting favorable to license agreement and resale proposition 91 per cent. of production voting favorable some await consultation and consent of their associates or counsel members desire your wire answer in time for to-morrows meeting called for ten AM .....

E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 145.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

March 31st, 1910.

Dear Sir:—

I attach copies of the preliminary agreements, with signatures attached, that were entered into at the Special Meeting of the Manufacturers held at New York March 29th and 30th.

In accordance with the Resolution adopted for the appointment of a special Committee to conclude the matter, the following gentlemen were elected by ballot.

T. R. Barnes
A. H. Cline, Jr.
Howard T. Gates
H. M. Hoelscher
F. J. Torrance.

This Committee will begin a special ten day session at Pittsburgh beginning probably the latter part of next week. Will you, therefore, kindly study over carefully the various paragraphs in the License Agreement and Jobbers' Agreement, and if you have any suggestions or amendments to offer, kindly write me *in detail* at once or make arrangements to appear before the *Committee*. In case you decide to take up the matter in person please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the Committee will meet with you.

In the absence of any reply from you, the Committee will take it for granted that the License and Jobbers Agreements as printed, copies of which you have, are satisfactory to you, together with the "differentials" allotted to your Company in accordance with the attached sheet. If the differentials allotted your Company do not meet with your approval please state fully your views and reasons.

Your very prompt attention to this entire matter is re-

Union Sanitary Mfg. Co. — C. E. Gates,
Wheeling Enameled Iron Co. — J. E. Wright, Pres. Per E. L. Wayman.
Clymer Mfg. Co. — W. A. Guthrie.

The following "Preferential Discounts" from the selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1—5 year Guaranteed Baths.
" 2—2 " " " "
" 3—All other Grades of Baths.
" 4—Small Ware—Lavatories, etc. & RR Sinks.
" 5—Sinks, Flat Rim.
" 6—Competitive Lavatories—552-562 inclusive 565 and 535.

Manufacturers	Schedules. 1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphryes	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of Goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets.

PETITIONER'S EXHIBIT No. 146.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

April 16th, 1910.

Mr. W. J. Kohler
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

The Price and Schedule Committe created at the meeting held in New York City, for the purpose of concluding the License and Resale Agreements, have just completed a special session held at Mt. Clemens, Mich. beginning April 8th. and ending April 14th.

All the details of the License Agreement and Jobbers' Agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the Committee making such additions or eliminations as they considered advisable.

Some changes were made in the arrangement of the Schedules as you will note by the attached copy as well as some changes in the differentials. All members who had suggestions to make or those whom the Committee desired to see, appeared before them and after going into all details and bringing up every possible question they went away entirely satisfied after having presented the Committe with letters, several of which are given below:

"We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents, and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebates that you may hereafter decide upon; it being understood that all Licensees shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate. We further agree to maintain any and all stipulations and provisions set forth in the schedules and also to the different differentials established for our Company as shown in the attached sheet."

1 "After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests."

2 The Committee will hold additional Meetings Tuesday April 19th. at Pittsburgh and Thursday April 21st., at New York City, which Meetings are believed will finish all the preliminaries. You may, therefore, expect to receive a notice calling a General Meeting to be held in New York City during the first week in May for the purpose of executing the final License Agreement Papers which will put this and the Re-sale proposition into effect on June 1st., which date is being expected and insisted upon by the Jobbers throughout the country. The Papers you will be asked to sign at this meeting will not be subject to any further changes. They embrace the best suggestions made to the 3 Committee, have been passed on by the best legal talent in the Country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual Companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter?

Yours very truly,

E. L. WAYMAN.

4 The following "Preferential Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1 —5 year Guaranteed Baths
" 2 —2 " " "
" 3 —All other grades of Baths
" 4 —Small Ware—Lavatories, etc.
" 4½—R. H Sinks, Slop Sinks, Sink Backs, Drain Boards, Factory Sinks, Urinals, Hoppers, Laundry Trays.
" 5 —Sinks, flat rim.
" 6 —Competitive lavatories, 558, 559, 561, 562
" 7 —Closet tanks—High and Low

SCHEDULES.

MANUFACTURERS. 1

	1	2	3	4	4½	5	6	7
Standard	None	None	None	None	None	None	None	None
Wolff	"	"	"	"	"	"	"	"
U. S.	"	"	"	"	"	"	"	"
Kohler	"	"	"	"	"	"	"	"
Barnes	"	"	"	"	"	"	"	"
Cahill	"	"	"	"	"	"	"	"
Mott	"	"	"	"	"	"	"	"
Union	5%	2½%	"	2½%	2½%	"	"	"
Colwell	5%	2½%	"	2½%	2½%	"	"	"
Clymer	5%	2½%	"	5%	5%	2½%	2½%	2½%
Blairsville	5%	2½%	"	5%	5%	2½%	2½%	2½%
McVay & Walker	5%	2½%	"	5%	5%	2½%	2½%	2½%
Kerner	5%	2½%	"	5%	5%	None	2½%	None
Weiskittel	5%	2½%	"	2½%	2½%	None	None	None
National	5%	2½%	"	2½%	2½%	None	None	None
Humphryes	5%	2½%	"	2½%	2½%	None	None	None
Day-Ward	5%	None	"	2½%	2½%	None	None	None
McCrum-Howell	5%	2½%	"	5%	2½%	None	None	None
Wheeling	5%	2½%	"	2½%	2½%	None	None	None

2

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets. 3

4

1 PETITIONER'S EXHIBIT No. 147.

Filed Nov. 4, 1910.

Design and Durability
unsurpassed.
Trade "Standard" Mark.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A50700U

2 "Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 7, 1910.

Mr. Robert Kohler,
Of J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

3 Mr. Torrance and I have just returned from New York, where yesterday at a full and representative meeting of manufacturers we have all signed up and entered into the license agreement and re-sale plan on enameled ware which, as you know, has been under consideration for several months.

Every manufacturer present, after a full and free discussion of the whole plan, signed the agreement without any proviso. We hope to have the plan in force by June 1st but all of us are already obligated to go ahead.

I regret very much that you did not attend this meeting
4 and Mr. Torrance and I would like to meet you in Chicago the latter part of next week if it is agreeable to you. We want to discuss this plan with you and see if we cannot get you to reconsider and join in with the rest of us. The Iron City Concern and yourselves are the only people of importance who have not signed. We think you ought to give this plan a fair trial.

During the last three months I have traveled extensively all over the United States and have interviewed a great many of the jobbers on this re-sale proposition. The jobbers are

almost a unit in favor of it. The Niagara Falls meeting passed a resolution unanimously approving it. The local Associations in a number of cities have demanded that we put such a re-sale plan in effect. It is not possible to carry through a re-sale price without a strong organization among the manufacturers and without some manner of controlling prices. The license agreement we have entered into with Mr. Wayman offers a legitimate and lawful way of doing this. We have submitted the plan to our attorney and he had advised us that it is all right. 1

I also had a thorough explanation from Mr. Jackson and so far as I can see, there are no legal difficulties in the way. 2

Let me explain, please, that so far as the Standard Sanitary Manufacturing Company is concerned, we would have preferred to conduct our business independently and without such an arrangement as we are now in. We earned over $1,000,000.00 net last year and feel that we can take care of ourselves under any and all conditions.

There are two reasons why we went into this agreement:

First, because our customers all over the United States have demanded it.

Next, owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobbers to handle and push other lines which he can substitute for enameled iron and on which he claims to make a better profit. The re-sale plan offers the jobber a fair profit and will remove the incentive to push other goods. 3

The plan under which we propose to operate is far reaching and leaves no middle ground to stand on. I can assure you that every body is most anxious to have you with us as we need both your advice and counsel and your support.

Please wire me Monday in care of this office and let me know whether you will meet us, and if so, on what day. Friday would suit Mr. Torrance best. 4

Yours very truly,

(signed) THEO. AHRENS,
President.

1 PETITIONER'S EXHIBIT No. 148.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.

General Offices.

Pittsburg, U. S. A.

In reply refer to No. A51826U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
2 office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 18, 1910.

Mr. J. B. Murphy, Vice-Pres.,
J. M. Kohler Sons Co.,
First National Bank Bldg.,
Chicago, Ill.

Dear sir:—

In discussing with you the proposed license and re-sale
3 arrangement during my recent visit to Chicago, I tried to make it plain to you that the principal reason: in fact, the one which really decided us to advocate this plan, was the unanimous demand made by the jobbers of the United States for some such plan and by which they could obtain a better profit on the sale of our product than they now enjoyed.

You seemed to doubt this assertion, which was repeatedly made by me and I regret to say that you seemed to think that we were not sincere or acting in good faith in the whole movement. I am sending you therefore a few of the letters which I wrote to my partners during my recent trip West,
4 and which will indicate how we felt about this subject.

Please note in my letter of March 9th the statement: "I understand that this re-sale proposition is being agitated to a considerable extent and it may be that it will force us to do some things which we would rather not do."

Again on March 21st in my letter to Mr. Torrance, I say: "It is evident from what you write me that we cannot afford to take a position in this matter which would be directly opposed to our customers' wishes, and I am glad to know that

we are working in harmony with the other manufacturers along this line." 1

Again on March 25th from Los Angeles, note the sentence on the second page: "It may be that our customers will force us to go into such a deal."

Again on April 9th from Seattle: "It is such a radical departure from what we have been doing for the last ten years that I am very unwilling to agree to it, but, on the other hand, if we do not do so, we will be blamed by our customers and it may hurt us."

Please note also copy of Mr. Myler's letter of February 2nd. addressed to me.

These letters should convince you that for the past four months we have been debating and discussing this subject among ourselves and that the reason which finally decided us to favor this plan was that we believed it was to our customers' interests to put it through and that we thought that the interest of our customers demanded it. I want to therefore again deny your assertion that I am a philanthropist. I am not but I am interested in the welfare of the people to whom we sell our goods and I believe that it is only good business policy on our part to help them make a profit if we can consistently do so. 2 3

Please return the letters after you have read them.

Yours very truly,

T.A.

President.

[NOTE: The answer to this exhibit is Exhibit No. 155.]

4

PETITIONER'S EXHIBIT No. 149.

Filed Nov. 4, 1910.

May 20th, 1910.

Mr. Theo. Ahrens, Pres.
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging yours of the 18th, the question of selling our goods lower than the Standard was brought up by you at the La Salle in the presence of Mr. Hoelscher, and you stated this was on the regular two-year guaranteed tub and the price was $11.00, which I did admit. I did say, however, that since I had been engaged in this business for about two and one-half years, you had been the main factor in reducing prices the greater portion of that time.

It is possible that recently, in a few cases, we did quote and sell lower than your price, but only in spots, and nothing of any consequence.

I did not state to you that Mr. Myler's check was sent to equal the $11.00 price on the tub, however. In this case you misunderstood me, but that his check was generally sent to equalize prices.

After this interview at the La Salle hotel, I took up the question with Mr. Kohler, and read to you Monday evening before you left, giving you the exact prices that we made in a few special cases only.

So far as the Eastern market is concerned, one of the principal manufacturers and a very reputable one who does quite a business in the East, stated that there was no bottom to New York prices.

I wish to say that any reductions that we have made have not been wholesale, horizontal reductions the same as your company have made, and are not so damaging to the manufacturer or the trade generally, for that reason.

We note that in the Eastern market you have not given a special rebate beyond the regular printed carload prices to *all the trade*. We do not know that we said to you that in any special market you did this.

As to the man whom you say lies, is it not possible that there is a mistake *somewhere?* We know of no price agree-

ment, and you accused us of selling below your prices, which, in a few cases, we did admit. We believe it is our privilege to do so, owing to your operations in this direction for a very long period.

We omitted to state that in the conversation with Mr. Torrance at the Hotel La Salle, we were accused also of selling our goods in the East on the same basis as many of the inferior class of manufacturers, and from the prices we gave you, and the prices you now accuse us of making, you must admit that you are very badly mistaken.

Yours very truly,

J. M. KOHLER SONS CO.

Vice prest.

[NOTE: This letter answers Exhibit No. 154.]

GOVERNMENT'S EXHIBIT 150.

PETITIONER'S EXHIBIT No. 150.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A51900U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 19, 1910.

RECEIVED
J. M. Kohler Sons Co.
Chicago Office
May 23, 1910
Ans'd .....
Order no .....
Return to Sheb.

Mr. Walter Kohler, Prest.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

Since my return to Pittsburgh our Executive Committe has again gone carefully over the proposed license and re sale arrangement and we have decided to go ahead with i and put it through and into effect June 1st.

We write to advise you of this fact and can only expres the hope that you will reconsider your determination not t become a party to this agreement and will join with us i this movement which, if successful, is bound to benefit ou customers greatly as it will insure a fair profit on a line o goods which at this time is fiercely competitive and on whic the profit has been altogether out of proportion to th trouble, annoyance and expense of handling the line.

Yours very truly,

THEO. AHRENS, *President*.

PETITIONER'S EXHIBIT No. 151.

Filed Nov. 4, 1910.

May 21st, '10.

Mr. Theodore Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging your letter of May 19th with enclosed copy of your letter of May 18th to Mr. Murphy at Chicago. We note your decision to proceed with the license agreement and resale arrangement as planned out and are not surprised, as we did not believe that our staying out would affect your determination if you felt that it was best for yourselves and your customers. As you know, we have not been favorable to a *license agreement* at any stage of the proceedings but we gave the subject very serious consideration before coming to the definite decision not to become parties thereto, and our position has not changed since meeting you at Chicago May 13th. The resale arrangement may be of benefit to the jobber and we do not object to this plan in the least.

Your letter to Mr. Murphy will, no doubt, be answered by him.

Very truly yours,
J. M. KOHLER SONS CO.,
per—
Pres.

WJK/W

1 The Sanitary Enameled Ware Association.
1509 Arrott Building
Pittburgh, Pa.

W-2121005-1

Feb. 12th, 1910.

E. L. Wayman,
Commissioner.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

2 Dear Sir:—

I am pleased to acknowledge receipt of your letter of the 10th with reference to Re-sale Prices and License Arrangement.

I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while that I can count on your co-operation.

Yours very truly,
(Signed) E. L. WAYMAN.
Commissioner.

3

Feb. 14th, '10.

Resale Price and License Arrangement.

Answering yours of the 12th. As you know, from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves, at present, to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we
4 decided, at that time, to become parties to this agreement, or to co-operate as outsiders, that we would, in that event, be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

Yours very truly,
J. M. KOHLER SONS CO.,
per —

WJK/W. *Pres.*

The Western Union Telegraph Company. 1

Received at Sheboygan, Wis.

"foned"

3pm.30.ch.b5.z.13 paid x x
Pattsburg, Pa. Feb'y. 28th, 1910. P.M.
Walter J. Kohler, "Z"
care J. M. Kohler Sons Co.

Sheboygan, Wisconsin.

Meeting will be held Wednesday ten A.M. Chicago Athletic Club will you attend. 2

(Signed) E. L. WAYMAN.

Edwin L. Wayman
1509 Arrott Building
Pittsburgh

W-3161001-I

March 16th, 1910.

Walter J. Kohler, Pres., 3
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enclose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the opportunity of seeing.

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co. 4
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphryes Mfg. Co.
Union Sanitary Mfg. Co.

There is now a meeting of the Pipe Association going on in Pittsburgh which is very largely attended by most of the leading Jobbers and the majority of them are very much in

favor of the proposition. I hope you can see your way clear to join with the other Companies in this Arrangement.

Will you be kind enough to let me hear from you as soon as possible?

Yours very truly,
(Signed) E. L. WAYMAN.

Memorandum of Agreement.

We hereby agree to execute with E. L. Wayman of the City of Pittsburg, as Licensor, on or before April 15th, 1910, a License Agreement for the Manufacture of Sanitary Enameled Ware under the following United States Letters Patent.

"Various Patents covering Pneumatic Dredgers."
(to be enumerated in detail).

and such additional Patents as may come into his possession, upon the Terms, Conditions, etc. as hereinafter stated or provided for:

1. The License Agreement to cover the following Schedules of Enameled Ware.

Schedule 1. 5 year Guaranteed Baths.
" 2. 2 " " "
" 3. All other Grades of Baths.
" 4. Small Ware, Lavatories, etc. & R.R. Sinks.
" 5. Flat Rim Sinks.
" 6. Competitive Lavatories 552 to 562 inclusive 565 & 535.

2. The amount of Royalty to be as follows:

$5.00 per day per furnace in operation with a rebate of 90 per cent., beginning with the 1st, month of the 2nd. period and monthly thereafter, if the terms of the License have been complied with.

3. For each violation of the Price Regulations of the License Agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The Selling Prices to the Jobbers to be established through the Licensor by a Price Committee appointed by the various manufacturers.

5. The Resale Prices to the Jobbers, taking into consideration the rebate for observance of Buying and Selling Regulations, shall be figured as follows: 1

High Grade Goods	25% above Jobbers' cost.
Competition Goods	16-2/3 above Jobbers cost.

6. The Rebates to Jobbers shall be as follows.

10% payable at end of Period for strict observance of agreements, the details of the manner in which the rebate shall be made, to be determined.

7. The length of the Rebate Periods shall be 3 months beginning April 15th, 1910, with the exception of the first period which shall end July 1st. 2

8. The License Agreement and Resale Prices shall become effective April 15th and the agreement to be executed between the Manufacturers and Jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the Resale Prices that may be established.

9. The details of Contract Forms between the Manufacturers and the Licensor shall be drawn up by the Licensor and submitted for approval at the next Special Meeting to be held in New York City. 3

10. The Licensor will also submit the same covering Agreement between Manufacturers and Jobbers.

11. The following "Preferential Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers.

Schedule 1.—5 year Guaranteed Baths.
" 2.—2 " " "
" 3.—All other Grades of Baths. 4
" 4.—Small Ware Lavatories, etc. & R.R. Sinks.
" 5.—Sinks, Flat Rim.
" 6.—Competitive Lavatories 552 to 562 inclusive 565 & 535.

SCHEDULES.

Manufacturers	1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphreys	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

12. The length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various Manufacturers.

Signed:

JOBBER'S AGREEMENT.

A suggested form of contract to be executed between the Manufacturer and Jobbers, that I have prepared.

EL.W.

THIS AGREEMENT, Made this.....day of.....19 between the .....a corporation (hereinafter called the COMPANY) and .... of ..... State of ....., hereinafter called the ("Purchaser");

WITNESSETH: Whereas, the Company controls or is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

Pat. No.	*Date*	*Inventor*	*Title*	1

And Whereas, the Purchaser desires to purchase from the COMPANY, Sanitary Enameled Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such Ware to others, and the Company is willing to sell Sanitary Enameled Ware to the Purchaser, and to License them for resale on the following terms and conditions:

Now, Therefore,

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time ending June 30th, 1910, 2

(Insert Label)

Sanitary Enameled Ware at the following discounts from the Prices given in the various Schedules:

DISCOUNTS & TERMS.

Schedule	Articles	Discounts from Resale Prices Established by the Licensor. 3
1.	5 year Guaranteed Baths	10%
2.	2 " " "	10%
3.	All other Grades of Baths	5%
4.	Small Ware—Lavatories, etc. & R.R. Sinks	10%
5.	Flat Rim Sinks.	5%
6.	Competitive Lavatories.	5%

4

TERMS: Net 60 days or 2% for cash 10 days.

Deliveries.

(2) Goods will be sold to the Purchaser, F.O.B. Cars, where factory is located at the Prices given in the Resale Sheets for the various Zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of 200 lbs. and over to the List of Cities named in the various Zones.

1 To other points than those named delivery can be made only on the basis of your being charged and paying freight from the nearest city named.

Goods shall be re-sold by the Purchaser at Prices established and prevailing in the various Zones into which the goods are shipped, regardless of the point of purchase.

Purchaser will be allowed C. L. Prices in any quantity on shipments to the Manufacturing Points specified. On shipments to Jobbing Points, other than Manufacturing points, C.L. or L.C.L. Prices will apply according to quantity, as established in the Price Sheets.

2

General Conditions.

(3) Prices or other Regulations are effective the morning of the date appearing on the sheet.

(4) The ware, covered by the Price Sheets shall be invoiced by individual items, and it is not permissible to bill collectively several articles in a "Lump Sum."

(5) The various conditions respecting "Guarantees" under which the ware is purchased by the Jobber, shall not be varied in the Resale to the Plumber.

3 (6) Enameled Ware purchased or on hand previous to April 15th shall be sold at the Prices and Regulations covering this Agreement.

(7) The restrictions herein contained, as to the prices at which Enameled Ware is to be purchased and sold, shall not apply to Enameled Ware sold and exported to Foreign Countries.

Rebates.

(8) If your purchases of material covered by the various Schedules from the following Licensed Manufacturers

4

Blairsville Enameled Ware Co.	Blairsville, Pa.
Barnes Mfg. Co., The	Mansfield, O.
Cahill Iron Works, The	Chattanooga, Tenn.
Clymer Mfg. Co.	Indiana, Pa.
Colwell Lead Co.	New York.
Day-Ward Co., The	Warren, Ohio.
Humphreys Mfg. Co., The	Mansfield, Ohio.
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.

Kohler Sons Co., J. M.	Sheboygan, Wis.	1
Mott Iron Works, The J. L.	New York City.	
McVay & Walker,	Braddock, Pa.	
McCrum-Howell Co.	New York City.	
National Sanitary Mfg. Co.	Salem, Ohio.	
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	
Union Sanitary Mfg. Co.	Noblesville, Ind.	
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.	
Wolff Mfg. Co., L.	Chicago, Ill.	
Weiskittel & Son, A.	Baltimore, Md.	
Wheeling Enameled Iron Co.	Wheeling, W. Va.	

have aggregated sums as follows and if all the conditions 2
of this Agreement have been complied with, we will pay you rebates set against them on such purchases as you have made from us, as follows.

$ ————————5%
————————7 ½%
————————10%
————————10 & 2½%

Rebates are payable only at the expiration of the Period ending June 30th, 1910 and after claims have been allowed by E. L. Wayman, Licensor, 1509 Arrott Bldg., Pittsburgh, 3
Pa.

Written application for Rebate must be made at the close of the Rebate Period to E. L. Wayman, Licensor, upon standard forms, which may be obtained from him for that purpose. Unless you present your claim for rebate within 30 days after the expiration of this agreement, we reserve the right to refuse to allow such Rebates.

Guarantee of Rebate.

(9) The Purchaser understands that the resale prices of all ware manufactured under the Letters Patent enumerated 4
herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Ware Manufacturers and by all Jobbers and Dealers. The Purchaser therefore, agrees that he will observe and strictly maintain on all types and classes of Ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the price sheets and furnished as a part of this agreement,

or as they may be embodied in the price sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

(10) The Purchaser also agrees during the life of this Contract, not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at re-sale prices, without any discount or rebate whatever.

(11) This agreement does not become binding on the Company until accepted in writing at the foot hereof by the salesmanager or his duly authorized representative located in the main sales office of the Company.

.....

Accepted this ..... day of .....19 .

.....(Purchaser).

.....(Company)

By .....

Mar. 21, 1910. 1

E. L. Wayman.

We have your letter of March 16th with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent council, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so. 2

Very truly yours,
J. M. KOHLER SONS CO.,
per—

WJK-D

Pres.

THE SANITARY ENAMELED WARE ASSOCIATION
1509 Arrott Building
Pittsburgh, Pa.

3

March 23rd, 1910.

E. L. Wayman
Commissioner.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

In reply to your letter of the 21st, I telegraphed you today as follows:

> "If you and your attorney will meet me New York next Monday, the day previous to meeting will satisfy you regarding legality. Wire answer so I can make appointment with my attorney." 4

I have just returned from New York City where I have had the entire matter up with E. E. Jackson, Chief Counsel

for the General Electric Company and who has handled for the past ten years their business in this direction in connection with other Companies.

I can hardly present the whole matter to you in a letter for various reasons and I would, therefore, like the opportunity of seeing you in New York, the day previous to the meeting, notice of which I sent you today.

With kind regards, and hoping you will be able to make an appointment with me for next Monday, I am,

Yours very truly,

(Signed) E. L. WAYMAN,

Commissioner.

Mar. 24, 1910.

E. L. Wayman.

Received your message of March 23rd, which we answered as follows—"Find our attorney out of city. I cannot arrange to be in New York Monday. Walter J. Kohler."

In explanation of the above, Mr. Kohler left the city today to be gone several days.

Yours very truly,

J. M. KOHLER SONS CO.,

per—

RJM/D

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

March 24th, 1910.

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wisc.

Dear Sir:—

I enclose for your consideration *Sample* Copy of the License Agreement to be executed between your Company and the writer, together with *Sample* Copy of a form of contract to be executed beginning each period between your Company and the Jobbers with whom you are doing business. I also enclose sample sheets of a Loose Leaf Price Book illustrating the Resale Price Arrangement.

The Discounts and Rebates named in the "Jobbers Agreement" would be allowed from the prices that will be established in the Resale sheets referred to. 1

You will note that it is intended to make all the operative resolutions part of the price regulations—these resolutions being listed on the sheets applying to the goods they are intended to cover.

Will you kindly study over these details, so that after a thorough discussion at the meeting, we can do business?

Yours very truly,

(Signed) E. L. WAYMAN.

Mar 26, 1910. 2

J. M. Kohler Sons & Co.,
Sheboygan, Wisc.

Ans'd .....

Order No. .....

3

4

some goods and 5% on others below any price we have ever named. This quotation was signed by Mr. Barth. We are advised that these prices were made general.

Yours very truly,

TA (signed) THEO. AHRENS, *Prest.*

[NOTE: The answer to this exhibit is Exhibit 149.]

PETITIONER'S EXHIBIT No. 155.

Filed Nov. 4, 1910.

[NOTE: This exhibit answers Exhibit 148.]

May 20th., 1910.

Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging yours of the 18th., I have read with interest the copies of letters you enclose, and am returning them herewith. Inasmuch, however, as you do not sign the letter presume it was not read by you after inscription. We see no occasion for the final paragraph of your letter, stating that you wish to deny that you are a philanthropist, but you do say that the principal reason in endeavoring to consummate the re-sale price is because you want to put through some plan that would be to the interest of your customers, and that you are interested in the welfare of the people who sell your goods.

You did state also, personally, that if the deal did not go through it would cost your share-holders $300,000 this year, as you would be obliged to lower prices.

It therefore seems strange how you can reconcile both statements, and we will agree that you are not a philanthropist.

Our position is, briefly: We will protect, as always, the jobber, and the people to whom we sell, so long as it is to our mutual interest to do so.

We will not, however, resort to any method that our attorney advises is in defiance of the law.

We are not antagonistic to the re-sale plan and our customers, as well as yourselves, know this.

Yours very truly,

J. M. KOHLER SONS CO.,

Vice-president.

1 PETITIONER'S EXHIBIT No. 156.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.

General Offices.

Pittsburg, U. S. A.

In reply refer to No. A-71105-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
2 Theo. Ahrens, President.

Louisville, Ky. July 11, 1910.

John Sullwold, President.
Western Supply Co.,
St. Paul, Minn.

My dear John:—

I am very sorry that I did not have a chance to meet you again on the day following our strenuous experience in Chicago. I counted on seeing you without fail, but was kept very busy all day with the California delegation, and
3 could not locate you.

Mr. Wayman has not advised me whether he finally convinced you that it was to your interest to sign the contract with us and come in. I hope you have done so. We will certainly all feel it very keenly if you oppose us in this matter.

On the day that I left Chicago we had secured signatures from 333 jobbers out of a total of less than 370, giving us fully 90% of the jobbers and more than 90% of the purchasing power. It was reported to us that early last spring you went on record in a communication to Merkel Bros.,
4 stating that you were in favor of the re-sale plan, and would use your best efforts with the manufacturers to have them put out such a plan. I certainly hope that you will not desert us.

Awaiting your reply, which I trust will be favorable, I am

Very truly yours,
(signed) THEO. AHRENS, President

A.

I enclose tab on the evening's entertainment.

PETITIONER'S EXHIBIT No. 157.

Filed Nov. 4, 1910.

July 13, 1910.

Mr. Theo. Ahrens, Prest.,
Standard Sanitary Mfg. Co.,
Louisville, Ky.

Dear Sir:—

Replying to yours of the 11th. beg to say I am also sorry I did not see you again; but from the attitude taken by your company in our correspondence and from the way they treated our Company in not advising us in any way about what they proposed to do in this re-sale plan, not protecting us in any way as I understand they did their favored customers, and from conference had with Mr. Wayman I was very much in doubt whether you wanted to see me again about this matter.

Yes, I did write Mr. Merkel that I was in favor of a re-sale plan on enameled ware and I am now in favor of a legitimate re-sale plan on enameled ware. To my mind the present plan is not legitimate, but is purely a hold-up scheme to make Mr. Wayman thirty or forty thousand dollars per year and several millions for men who are already rich, and also putting on their feet a number of smaller enameled ware manufacturers who were anxious to get into the enameled ware business, but who could not stand alone and meet the competition of the larger and older manufacturers of this commodity, and also to put on their feet a lot of men in the jobbing business who wanted all the trade and make prices to crowd out their competitors and did not know enough to run a jobbing business, and by so doing they were putting themselves out of business.

Only a few years ago, when in conference with you, when the demand for your product was greater than the supply and all the jobbers were crying for enameled ware, I asked you why you did not advance the price on your product. Your answer was that the Standard Sanitary Mfg. Co., was a one hundred-cent-on-the-dollar concern, that you were getting fair returns on your investment on the cost of production at that time and, unless you were outvoted by your directors, there would be no advance, the

1 cost of production remaining the same. Had you and your company stuck to this policy and stood on your own bottom you would have had just as much money as you have today; but there would have been less manufacturers. Your company built up your competition by advancing prices.

The present re-sale scheme will build up the fellow who cannot produce enameled ware as cheaply as your company can and in a year or two there will be from ten to twenty more enameled ware manufacturers in the country. Your patents are only a subterfuge and are not essential in the manufacture of enameled ware. Any one can go into the
2 business. The re-sale plan will go to pot and the jobber will be worse off than ever. You may not care, as you have money enough and may want to get out from under before the trouble comes and you may feel—"To h— with the public", as the old saying is. Why not be fair in this matter and not make it harder for the future generation than you can help?

This fictitious value scheme has been tried out by the U. S. Steel Corporation, the American Radiator Co., the Trenton Potteries Co., the Central Foundry Co., and many others and failed.

3 While in Chicago I heard a Pacific Coast jobber say he did not care what the manufacturers did as long as he could make a good profit. This man failed in Minneapolis about eighteen years ago.

Now, why the advance in enameled ware at this time, when all other commodities are on a decline or hanging on by their eye lashes to maintain present prices, excepting possibly a slight advance to pay the expenses of a man, printing, postage, etc?

As to the treatment we received, I was in Chicago twice in May and tried to get a line on what was proposed, but
4 could get no information. I inquired if there would be an advance in price. Was told there would not. I was not consulted at all as to how we would like this deal. Now, I find that the Crane Co., were in conference several times during this period, they acquiesced in this scheme, adopted the re-sale plan and can sell any ware they wish to without any restriction, they, knowing what was going to happen, advised their trade, got in an covered. The United States Supply Co., a would be jobber of this city, who handle the U. S. Sanitary Mfg. Co.'s goods, I find also went around to

the trade prior to June 1st., and filled up everyone who would buy from them at old prices. I am also advised that other favored customers of yours were protected and were advised that an advance would take place so that they could cover. Your company took our good hard money for twenty years but you never advised us. Last Spring, after a conference with you and Mr. Torrance in Chicago I bought five hundred tubs from you and paid you forty cents a piece more for them than I could buy an equally class tub for, made by a reliable manufacturer. On this one order our Company paid you two hundred dollars more, to be loyal to you; but I presume because we bought a lot of Kohler ware every year that we were practically compelled to introduce into this market after offering the business to the Standard Sanitary Mfg. Co., who turned it down with the statement that they were not in a position to take on any more customers on small ware at that time and that they were already oversold, you did not count on us as one of your loyal customers. Why should the Crane Co., enjoy, just because they are large buyers, privileges that are not granted us? The first thing we knew about the whole plan was when we received from the different manufacturers a letter advising us to sign a re-sale plan and that unless we did we could get no more goods. I wrote Mr. Wayman for permission to sell Kohler ware as provided for in the agreement and was refused point blank. 1 2 3

Paragraph 10 in the re-sale agreement is coercion, non-American, unjust and we believe illegal, denying us our individual rights.

Since my conference with Mr. Wayman in Chicago he wrote, granting permission to sell Kohler ware *until further notice*. Which might be withdrawn within twenty-four hours after he had our signature. This proposition is an insult to anyone with ordinary intelligence and I told him so. 4

Now, I am not setting myself up as a socialist or a modern reformer, or a man with better judgment than the men who signed this agreement. Our Company has always and do now believe in making a reasonable profit on everything that we sell and are also willing that the manufacturers should have a reasonable profit. In fact, our policy has always been never to sell goods or let them leave our store unless there was a reasonable profit in the sale. We,

as you know, started small twenty years ago and if we had not done business along these lines we would not have the monument to show for our labors that we have today; but, using Theo. Roosevelt's favorite term "We want a square deal to all and are in favor of a square deal to all".

We are going to run our own business. We absolutely refuse to sign the re-sale plan as now outlined, come what may. We realize that this will cost us some money and annoyance. We have in the printers' hands at the present time six thousand dollars worth of plumbing specialty catalogues, illustrating a great many of the Standard Sanitary Mfg. Co's specialties. We are holding this up. We do not know what list to use and further, before we are coerced into signing away what we believe to be our rights, we will not illustrate the goods at all and cut them out entirely. We realize and appreciate fully that the Standard Sanitary Mfg. Co. can get along very nicely without us, but we are also egotistical enough to believe that we can also remain in business without them.

As already advised Mr. Wayman, we will now use all honorable methods to break up this, as we believe, illegal combination.

I regret very much indeed that there is this difference in our opinion. I want to thank you personally and also the other members of your company and your employes, whom I have known for many years, for the courtesies that I have received at their hands. There is nothing that has come up in our business in years that I have given so much careful consideration. Have not acted in haste. I have conferred very seriously with my partner, Mr. Bettingen and am acting in absolute good faith, taking the stand which I believe to be right and just.

Yours very truly,

WESTERN SUPPLY CO.,

Dict. J.L.S. Per J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 158.

Filed Nov. 4, 1910.

THE NORTH AMERICAN TELEGRAPH COMPANY.
Telegram.

July 5, 1910 Paid.

E. L. Wayman,
c/o La Salle Hotel,
Chicago, Ill.

Will meet you La Salle hotel three oclock tomorrow afternoon.

J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 159.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A-71801-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

2 Louisville, Ky. July 18, 1910.

Mr. John L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

My dear Sullwold:—

Your letter of July 13th. reads as if the argument made by Mr. Fowle before the Stratford Hotel bar and other bars in Chicago, really produced an impression on you. Let me say to you that it is unfair in the extreme, and what is
3 worse, you make statements that you cannot substantiate, but I want to answer it, not because I believe I can influence your opinion, but because I cannot allow such misstatements as you make to go unchallenged. Personally, so far as I am concerned, I do not care whether you sign up or not. This is personal.

Your first argument that we are injuring ourselves, and building up our competitors, is advice that we do not need. Like you, we claim the right to run our own business, and to decide what is good for us.

Your second point that the re-sale plan is not a good
4 thing for the legitimate jobber, is answered by the fact that within thirty days after the jobber's contracts were sent out 90% of the legitimate jobbers of the United States had signed and returned them.

You say our patents are only a subterfuge. How do you know that? What right have you to call these patents a subterfuge? You do not know what you are talking about when you say this. Neither does your informant, even if it is Walter Kohler, or J. B. Murphy.

You say this fictitious value scheme has been tried out

by the United States Steel Corporation, American Radiator Co., The Trenton Potteries Co., the Central Foundry Co., and many others ,and that it failed. I am not aware that any of these corporations ever tried out such a plan as we are now working under; in fact, I am sure they have not done so. 1

"You ask why an advance should be made at this time. In reply we can say that our prices under the re-sale plan are no higher than they were before June 1st., with the exception of the Missouri River territory, where we have heretofore paid excessive freight allowance, and where we have now equalized so that our product will give us the same return in that territory as in the rest of the United States. Our prices in New York City, Philadelphia, Boston, Chicago, Pittsburg, Cleveland, Louisville, and in fact through the entire East and Central section of the country are as low as they were before the re-sale plan went into effect. It happens that in your particular territory they are slightly higher. 2

Your complaints that the Standard Sanitary Mfg. Co. has not given you proper treatment; that you were not given opportunity to cover yourself before June 1st., and that you were not consulted with regard to the re-sale plan, are all unfounded. 3

I have just talked to Mr. Verity on the long distance; called him up especially to find out whether he had offered to take care of you before June 1st. He advised me that he called on you about May 20th., and that you told him you were not in need of anything, as you had a good stock on hand and did not want to buy any more. We have at all times been willing and anxious to serve you to the best of our ability and to give you the best we had in the shop, both as to service and price.

I believe we have done so. It is true that we conferred with the Crane Co., on this plan. It is also true that we did not take it up with you direct. Our reason for not taking it up with you direct is because we were advised that you were heartily in favor of the re-sale plan, and so expressed yourself both in writing and verbally. It was necessary for us to take it up with the Crane Co., on account of their prominence, and the fact that they are the largest distributors of Enameled Iron Ware in the United States. It was not possible for us to take it up with all 4

our good friends, as much as we would have liked to do so, as it was a physical impossibility to do this.

I understand that you are sending out a copy of Kohler's letter to the trade, and are advising your customers that paragraph 10 of the re-sale agreement is a coercion, Un-American, unjust, and you believe is illegal, as it denies you your individual rights.

Let me ask you why we should not have the same rights to refuse to sell our goods to someone as Kohler has, and as he is now doing? Right next door to you in Minneapolis, the Crane Branch has the exclusive sale of Kohler goods, and Kohler has repeatedly turned down orders for his enameled ware sent in by the Central Supply Co. Try it yourself and see whether he will fill the orders for you, yet you blame us for now doing the very thing your friend Kohler has been doing for several years.

Now I am very sorry indeed to receive this letter from you. Personally, I do not care whether you sign or not. I know that you can get along without us just as well as we can get along without you, but I do not like the idea of an old friend and customer like you telling me that we are a lot of high-binders and pirates. That sort of talk might do all right when we are doing Chicago, and ordering up just one more about every five minutes, but it is not fair to us when you really sit down in your office and in sober earnest write us such a letter. The Standard Sanitary Mfg. Co. has always, and is now doing a clean, honest and legitimate business, and we take no back seat as against your concern, or any other.

I want to add that I hope this difference of opinion between us on a business matter will not cause any break in our personal relation. I am coming up to see you this summer, and I will promise not to talk re-sale agreements, or to ask for any of your business. You can run your business just as you please, and we will do the same, but I hope before another 12 months rolls around that we can convince you by the actual facts of the case that the position you have taken is all wrong.

Yours very truly,

THEO. AHRENS,
President.

A.

P. S. In dictating this letter, I forgot to say that re-sale

prices are not an unusual thing. No doubt you are maintaining them on some items that you sell. Wrought pipe, for instance, Penberthy injectors. In other lines of business they are quite common and cover many of the things that you eat, drink, wear and use, such as, for instance, Ivory Soap, Winchester Cartridges, Breakfast Food, etc., etc.

PETITIONER'S EXHIBIT No. 160.

Filed Nov. 4, 1910.

June 13, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

Dear Sir:—

The re-sale price as outlined does not look very good to me. We have, as you know, been handling the Kohler
2 Small ware, have same illustrated in our catalogue and have quite a large stock of them on hand. I have written Mr. Wayman for permission to continue to handle this ware. This he has refused. The Kohler people do not seem inclined to go into this arrangement.

While we expressed ourselves several months ago, when approached on the re-sale proposition, as being in favor of a re-sale plan, we find that the plan now proposed is working an injury on us, as under the proposed arrangement we will make a smaller profit on enameled ware, outside of the two year guarantee tubs, on which the profit would
3 remain about the same. By this plan the manufacturers propose to increase their profits materially at the expense of the jobber who has had business ability enough to get a fair profit on the goods he sold. As the writer sees it, this emanates from the eastern jobber who did not know enough to get a reasonable return on merchandise sold; but knifed each other to the extent that they found they were not making any money. Now they want to pull in all the jobbers in the United States in this arrangement, which is unfair to us.

I am not adverse at any time that a manufacturer should increase his profits to get fair returns on money
4 invested providing he does not do it at our expense.

I am not at all sure that the resale price on enameled ware and quite a number of other commodities is a permanent good thing for either the manufacturer or the jobber. It seems to me it only lets down the bars for both manufacturer and jobber to invite competition, which has been very difficult to exterminate when once established. This has been demonstrated by some of the largest concerns in the country, who have built up competition by holding their prices on their products above normal and

afterwards, when they found the damages they had done, they dropped their prices materially. A year ago last February the National Tube Co. lowered their price ten dollars per ton on pipe. A year ago last January the American Radiator Co. lowered their price on house heating boilers 20% and on radiators 10%. Several years ago the earthenware manufacturers did the same thing. The enameled ware manufacturers also did this same thing, with the result that they were all holding the umbrella so that others could get into the game and I am of the opinion that if a resale price were to be established on a majority of the commodities we sell that we would have one hundred and fifty new jobbers in the United States in the next twelve months besides numerous new manufacturers. 1 2

The hardware jobbers today are endeavoring to sell everything from a ten penny nail to a gold watch. They are very anxious to get into the plumbing supply business, particularly in the west. The Marshall-Wells Hardware Co. of Duluth have declared to one of our friends within a week that they now have practically a complete line of plumbing supplies and that they propose to go into this business so that they can supply the hardware men throughout the country, whom they sell, with plumbing goods. This would mean that every general store in the small towns that carries a small line of hardware, as they usually do, would be able to purchase plumbing goods, to be put in by a blacksmith or a tin smith. This will work an injury to every jobber and every legitimate retailor in plumbing supplies. The prices are fixed so that it will encourage new manufacturers in plumbing supplies. There will undoubtedly be an overproduction; these manufacturers will want to dispose of their products and the hardware jobber will have no trouble in getting into this business. Up to date the hardware jobber has been fairly controlled and it seems to me that it would simply force the legitimate jobber of plumbing supplies today, who have the capital to carry out the plan, to market his product on the Sears-Roebuck plan —to sell to any one who has the price. If this was carried out it would upset the whole jobbing business as well as to decrease the earning power of the largest manufacturers now in business and it would mean a total demoralization of the whole plumbing supply proposition I am therefore not in favor of a re-sale plan on enameled ware as outlined. 3 4

1 I do not like to be arbitrary or be contrary to bettering the conditions; but I do not think it is justice that our Company should be called on to pay the expense of the jobber or jobbing community who do not know how to carry on a legitimate jobbing business.

Would be pleased to have a line from you.

Yours very truly,

WESTERN SUPPLY CO.,

dict J.L.S. Per J. L. SULLWOLD.

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PETITIONER'S EXHIBIT No. 161.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T-61615-U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 16, 1910.

Mr. J. L. Sullwold,
Western Supply Co.,
St. Paul, Minn.

Mr. dear John,

I was greatly disappointed at not seeing you at Toledo yesterday. I went there more to see you than any other one person and as I say, was greatly disappointed.

I explained as well as I could the conditions to Mr. Frye. I want to say to you, Friend Sullwold, that we went into this proposition at the request, if not the behest of the jobbers, and if it is not to their liking, it will be a great disappointment to me. I am sorry I ever heard of the scheme because it does not seem to be appreciated by all of the jobbers and it should be. My argument is simply this:

The re-sale agreement is the only legal remedy that can or may be applied to better conditions as they exist in the larger majority of jobbing centers. The opinions expressed in the meetings yesterday are just those as previously expressed to us individually and collectively. Where the conditions are bad, and that's pretty generally, they want the re-sale proposition but it seems they want the other fellow to have it and the particular party in question wants to be allowed to do as he pleased. This, of course, we can't do. If the re-sale scheme for iron pipe is a good one and has made, as generally expressed, a profit for the jobber, then why is not a similar scheme for enameled iron, particularly so when it is along such lines (and we believe it so to be) as will not

meet with opposition on the part of the Courts. The whole thing seems to be a mystery as well as a disappointment.

Here is a proposition which assures the jobber of a profit and assures him a steady and continuous market so far as profit is concerned, permits him to know almost to a certainty what his neighbor's goods are costing him and therefore what his competition is based upon, the profit being the same for each, excepting in the case of the smaller jobber who does not buy a sufficient quantity to obtain a preferential or quantity discount, and which extra discount we believe the larger buyer is entitled to, although on this score, men like doctors, differ.

I have worked for eight weeks very strenuously on this matter, not only at the risk of my personal comfort but even of my health because it has taken my time from my own regular line of work, compelling me to do this regular work afterwards and make up for it and find now that it is spent on a cause that is, to a degree, distasteful and obnoxious to the very people who will be benefited by it and to find any opposition is rather a surprise to us.

I have only to say that we have over one hundred sixty (160) jobbers who have registered with us. I do not know how many have registered with the other manufacturers, parties to the agreements. The names cover from the Atlantic to the Pacific; with the exception of one customer in New England, all the trade there have signed up. This one has a particular reason but I think will come in.

Yours very truly,

(Signed) FRANCIS J. TORRANCE.

FJT

PETITIONER'S EXHIBIT No. 162.

Filed Nov. 4, 1910.

June 21, 1910.

Mr. Francis J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

My dear Torrance:—

I have yours of the 16th and note contents carefully. I assume that you did not receive my letter of the 13th, in which I tried to explain fully my feeling in the matter.

I have been in the plumbing supply business ever since I was sixteen years old, I have been at the head of this Company for twenty years, I have been fairly successful and I trust without getting what is commonly called—the swelled head. I attribute the success of this Company to two things —Our policy from the very start was never to let any goods go out from our store unless we received a reasonable profit in return regardless of what our competitors were doing and, as you know, our big competitors in this market did not give us the glad hand or welcome to our city. The other was—good, honest hard work. I can therefore state from actual experience that any one going into any line of business that applies these two principles to his business cannot help but be successful.

The present re-sale plan on enameled ware would cost our Company quite a little sum of money annually, besides throwing down the bars to invite competition both for the manufacturer and ourselves.

You refer to the re-sale scheme on iron pipe. This scheme is on an entirely different basis. A year ago last February the National Tube Co., after holding their prices above normal for a number of years, woke up suddenly and found they had built up some good stiff competition that was cutting into their tonnage. They immediately took steps in their own organization, without consulting any one, to cut the price ten dollars per ton. This cut cost the jobbers that had a stock of pipe on hand, I would estimate two hundred thousand dollars. In order to re-emburse the jobber in a measure for this they promulgated a re-sale plan and intimated to the independent mills that if the price to the jobber on the re-sale plan would not be maintained that they (the

1 National Tube Co.) would cut the price again. They did not go to the jobber however and tell him that he must confine his sales to certain manufacturers as has been done in the enameled ware scheme.

Now friend Torrance, just a word as to our relations with you. Ever since we have been in business, 95% of the bath tubs we have handled have been of your make and quite a little small ware. We have a copy of a letter on file here which I wrote you several years ago, in which I told you frankly that it was my desire to purchase all our enameled ware from your company and asked you what you could do
2 for us. You replied that we had your regular discount sheet and the prices therein were the best you had. You stated further that as to small enameled ware you were already oversold and that you thought it best to advise us frankly as to your conditions and that you could not take us on at that time on our small enameled ware requirements. There was nothing left for us to do except to make arrangements for small enameled ware with another company and we decided on the Kohler goods. That ware up to that time we had handled only in a small way. This concern were progressive, they made good ware, made lots of it and they
3 supplied us with our requirements with the result that we established a large trade on Kohler small enameled ware throughout the northwest, which we still enjoy, and we have same illustrated in our catalogues and you know they cost money. Now Mr. Wayman tells us that we must cease buying Kohler ware, destroy our catalogues or the licensed manufacturers will not sell us. One of the licensed manufacturers has already refused to ship us goods until we sign the agreement.

Another feature that I cannot understand is how the Crane Co. can sell Kohler ware in their Minneapolis store,
4 Standard Sanitary Mfg. Co.'s ware in their St. Paul store, and both in their Aberdeen, Fargo and Duluth branches. Some of these things have got to be made clear to me before I can be railroaded into a scheme, which, as I see it now, is going to cost The Western Supply Co. several thousand dollars a year in loss of profits, and increase the manufacturers' profit materially for the time being only, as I feel confident that with the prices asked for by the manufacturers at this time, when there is no advance on any other commodity in this line, it will only build up competition for the manufacturer

as well as for the jobber, as there is no combination on earth 1
that can beat the man that will work hard and market his goods at a profit. It is impossible for the largest manufacturer in the country to compete with him or put him out of business except at a great loss to themselves.

Again, we find that the United States Supply Co. of this city, who should not be recognized as jobbers at all, but as brokers, are handling the United States Sanitary Mfg. Co.'s line and their salesman informed one of our men today that they had no instructions as to maintaining a re-sale price.

I regret very much that I was not able to attend the C.S.A. meeting at Toledo, as we had our annual stockholders 2
meeting on the 14th of this month. We had matters of importance coming up at this meeting and it was impossible for me to get away. Again, it works quite a hardship on us to attend a meeting east of Chicago as it practically requires a week to attend these meetings.

I am sorry that our opinions differ in regard to the re-sale plan as now outlined and I have decided not to sign this re-sale plan and, as I understand it, you will not ship us any more goods until this agreement is signed. Our Company will therefore fight this out to the best of our ability.

3

Beg to assure you there is no personal feeling in this matter at all. It is simply a clear case of where I feel that our pocket-book is being legislated against by the people who are living in your territory where the conditions are entirely different from what they are here and I do not see why we should be called upon to pay for their folly. On the whole I feel that this scheme was railroaded through altogether too much of a hurry and the jobbers who have ruined their own business through their own folly were ready to take anything and urged the manufacturers strongly to adopt this scheme.

4

Yours very truly,

WESTERN SUPPLY CO.,

dict. J.L.S. Per J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 163.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T-62300-U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
2 1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 23, 1910.

Mr. John L. Sullwold, Prest.,
Western Supply Co.,
St. Paul, Minn.

My dear John:—

I am obliged by your letter of the 21st. but am not sure that the contents are equally good for both of us. I think
3 you would be better to go along with us in this matter because the paramount object in it is for the benefit of the jobber, not the manufacturer. The only real gain that the manufacturer has to hope for is the increased sale and use of enameled iron instead of some other materials.

Your experience, owing to territorial conditions, may be different from that of other jobbers and it certainly is, taking your statements at their face and we have no desire or reason to take them otherwise. All over the country we have been hearing that enameled ware was profitless to the jobber and that there was more money in solid porcelain, vitreous
4 china and other goods which might be readily substituted both to the satisfaction of the consumer and the advantage of the jobber. We went into the scheme for that reason alone, i. e. to make our goods profitable to those who handle them. We have no ulterior motive whatever.

As to the legality of the scheme, we have no doubt, else we would not have gone into it. We may be mistaken in this and time alone will prove it.

As to Kohler's attitude in the matter, this is simply his own stubborn ideas in the matter. He is standing out

against the wishes of, to the best of my knowledge, at least 75% of his customers and as they put it, preventing their making a proper and reasonable profit on their goods. 1

In the matter you speak of as to our small ware, would say it is many years since we were able to take care of you on small ware and the recent reasons given by you for purchasing small ware from Kohler were simply that you could get from Sheboygan mixed cars which you could not get from here. How correct this is, I am not just sure of at the present time but I can't just understand how, under the Inter-State Commerce, you could get anything different from Sheboygan than you could get from Pittsburg or New Brighton. If it is a good thing for one Concern, it ought to be for all. I can't see it in any other light unless it would be the selfish position which some manufacturer might temporarily occupy to the disadvantage of his competitor or neighbor. 2

Let me ask you, do you not handle any goods on a re-sale agreement. I understand you do but I may be misinformed. Let me also ask you if the resale pipe business has not been a profitable one. While you make some criticism about the method of its establishment and we have no objection to your arguments whatever, you do not say that it has not been profitable and I assume, as you do not say to the contrary, you are a party to it and are working under it. 3

The reference you make on the second page of your letter in which you advert to our (at least, I so take it) going to the jobber and telling him what he must do, you must bear in mind that all this is predicated on certain patents, the validity of which have been established by the United States Courts in New York, Chicago and Pittsburg. There has been no desire on the part of those promoting this scheme to shut out anybody, either manufacturer or jobber; in fact, all manufacturers were invited, urged and coaxed to come in. In fact, there has been no attempt whatever to shut anyone out. The policy has been positively and energetically to the contrary. 4

I hope you will think the matter over and come along because we would like to continue our very pleasant relations with you.

Yours very truly,

F.J.T. (Signed) FRANCIS J. TORRANCE.

PETITIONER'S EXHIBIT No. 164.

Filed Nov. 4, 1910.

June 27, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

My dear Torrance:

Note yours of the 23rd. and I am satisfied beyond a doubt that your ideas and mine do not agree. I am going to answer a few of your questions and remarks.

You state that the reasons given by us for purchasing small ware from Kohler were simply that we could get from Sheboygan mixed cars which we could not get from you. You are surely in error about this as we could not make this statement and make it truthfully, as Kohler cannot ship combination cars of small ware from Sheboygan to St. Paul or any other western point. This is a privilege however that the Interstate Commerce Commission has allowed you to enjoy. We have been able to purchase of you and could to-day, if you were willing to sell us, mixed carloads of enameled ware shipped to St. Paul and shipped west from here; or in other words, we could ship direct to our customers mixed carloads of enameled ware from any of your plants. Where you get this idea we are at a loss to understand.

You ask "Do you handle any goods on a re-sale agreement?" Replying to same I will say "No sir". We are however today selling two commodities on a re-sale price established by the manufacturers. One is wrought pipe; the other is Penberthy injectors. These people do not say to us however "If you want to enjoy this re-sale price we want to advance our selling price to you, you must confine your purchases to certain manufacturers or we will not sell you, and you must be satisfied with a smaller profit than you are now getting, because certain jobbers in the east are not enjoying the profits that you are making and they are satisfied with our plan; why should not you be?" I have paid my respects to the business methods of some of the eastern jobbers in my former letter and I do not see why we should be called upon to pay good hard earned money for the follies of others.

I want to say right here that I am in favor of a re-sale

plan that is legal, a re-sale plan that is just and fair to every one, that will net a reasonable return to the manufacturer and a reasonable return to the jobber. Every laborer is entitled to his hire, every capitalist is entitled to a legitimate fair return on his capital, every manufacturer is entitled to a fair return on the goods he produces and in addition to this he is entitled to a reasonable return for the hazards there are in his business. I am absolutely opposed to any combination of manufacturers, jobbers or any one else to bleed the public. I never have been a party to any combination of this kind and never will be, even though it be legalized. By this I mean that neither manufacturer or jobber has any right to exhorbitant profits. It never has and never will end well. I am not in favor of the re-sale plan adopted by the enameled ware manufacturers as you now have it and will not become a party to same. 1 2

Reading between the lines in your letter I now understand that you do not want any of our orders unless we sign your license agreement. Kindly advise us if this is true so that we may not lose our own time and take up yours by sending you these orders only to be returned and so that we may advise our customers that our Company is not in a position to furnish licensed enameled ware. 3

Yours very truly,

WESTERN SUPPLY CO.,

Dict. J.L.S. Per J. L. SULLWOLD.

4

PETITIONER'S EXHIBIT No. 165.

Filed Nov. 4, 1910.

June 10, 1910.

Mr. W. A. Myler,
c/o Standard Sanitary Mfg. Co.,
Pitttsburg, Pa.

Dear Sir:—

I have your recent letter withdrawing perferential discounts. We also have re-sale proposition submitted to us.

As far as our Company is concerned I can see where the re-sale plan submitted is increasing your income materially, as, if I understand the plan correctly, it increases the cost to us materially. The proposed re-sale price is considerably less than we are now getting. In other words, the profit on the re-sale plan to us is less. We have always been able in this market to maintain a selling price that netted us a fair return on our investment and, as I see the situation now, it seems that just because a lot of the eastern jobbers were not able to maintain a respectable selling price on their product they have appealed to the manufacturers to help them out by adopting a re-sale plan at our expense. On everything excepting the two year guarantee tubs we are getting a better price than the re-sale plan will give us and on the tubs in question we have been getting at least as much profit, if not a little more; so you can naturally see that this plan does not appeal to me at all for the simple reason, while I am not adverse to increasing your percentage of profit, that it is cutting down our profit on enameled ware materially, which, if adopted, will cost us a good deal of money at the end of the year.

Yours very truly,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD

Dict. J.L.S.

PETITIONER'S EXHIBIT No. 166.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No.

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A.
June 4th, 1910.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Standard" Sanitary Enameled Iron Ware for the period beginning June 6th and ending Dec. 31st, 1910.

Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
STANDARD SANITARY MFG. CO.
F. J. TORRANCE
1st Vice-Prest.

Received
June 6—1910.
THE WESTERN SUPPLY CO.

PETITIONER'S EXHIBIT No. 167.

Filed Nov. 4, 1910.

WHEELING ENAMELED IRON CO.
Manufacturers
of
Sanitary "Porceliron."

Elm Grove, W. Va., June 6/10.

Gentlemen:

Enclosed find copies in duplicate of Contracts covering the purchase of Liscensed Wheeling Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Liscensed Sanitary Enameled Ware.

We are prepared to offer you a further discount of 5% on the Five-year Guaranteed Bath Tubs and 2½% on the Two-year Guaranteed Bath Tubs purchased from us during the life of this Contract.

These additional discounts will be deducted from the face of the Invoice. Thanking you for your courtesy and prompt attention, and soliciting a share of your valued patronage, we are

Yours respectfully,
WHEELING ENAMELED-IRON CO.

GWF/MR

Received June 13, 1910
The Western Supply Co.

PETITIONER'S EXHIBIT No. 168. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa.
Enameled Ware Plant
Uniontown, Pa.

Electric Plant
Racine, Wis. 2
Vacuum Cleaner Plant,
Chicago, Ill.

May 31, 1910.

The Western Supply Co.,
5th & Sibley Sts.,
St. Paul, Minn.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed RICHMOND Sanitary Enameled Iron Ware for the period beginning June 6th and ending December 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware. 3

Yours very truly,

HTG-EMT.

HOWARD T. GATES,
Secretary.

Received
June 8—1910
THE WESTERN SUPPLY CO. 4

PETITIONER'S EXHIBIT No. 169.

Filed Nov. 4, 1910.

L. C. Huesmann, President.
I. G. Smith, 1st Vice-President.
C. E. Gates, 2nd Vice-President & Mgr.
E. V. Brigham, Sec'y. & Treas.

UNION SANITARY MFG. CO.
Successors to the McElwaine-Richards Company.
Manufacturers of
Cast Iron Enameled Bath Tubs, Lavatories and Sinks,
Soil Pipe and Soil Pipe Fittings.
Noblesville, Indiana.

Design
Durability
Unexcelled.

Quotations and Contracts subject to possible delay from strikes, accidents or other causes beyond reasonable control of the seller.

June 1st, 10.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Union Sanitary Mfg. Co.'s Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
UNION SANITARY MFG. CO.

EVB.

PETITIONER'S EXHIBIT No. 170.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.
Our Works 1890.
Our Works 1905.
Our Works to-day.

Established 1875.

THE CAHILL IRON WORKS.
Manufacturers of
Plumbers' Porcelain Enameled Cast Iron Ware
"Southern Beauty"

Lavatories, One Piece Roll Rim and Apron Sinks etc.
Factory, Corner Boyce & 13th Sts.

Main Office and Salesrooms, Corner Boyce & 14th Sts.,
Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 1, 1910.

Received Jun. 6—1910.
The Western Supply Co.

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Southern Beauty" Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled ware.

Yours truly,
THE CAHILL IRON WORKS.

PETITIONER'S EXHIBIT No. 171.

Filed Nov. 4, 1910.

L. Wolf, President,
John Clifford, Sec'y & Gen'l Mgr.
H. M. Hoelscher, Ass't. Sec'y.
John F. Wolf, Vice-President
Christian J. Wolf, 2nd. V. Pres.

L. WOLF MANUFACTURING CO.
Plumbing
Goods.

Chicago, Ill. June-13-1910.

WU-H
Western Supply Co.,
St. Paul, Minn.

Dear Sirs:—

Enclosed find copies in duplicate of contracts covering the purchase of Licensed L. Wolff Mfg. Company's Sanitary Enameled Iron Ware for the period beginning June 1st, and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you any Licensed Sanitary Enameled Ware.

Yours truly,
L. WOLFF MFG. COMPANY.
W. S. VITLEY.

Received
June 14, 1910
THE WESTERN SUPPLY CO.

PETITIONER'S EXHIBIT No. 172.

1

Filed Nov. 4, 1910.

Established 1862

Telephone P. & A. 312
Bell 170 Braddock

McVAY & WALKER
Iron Founders
Manufacturers of
Porcelain Enameled Bath Tubs
Soil Pipe and Fittings
Sinks, Hoppers, etc.
Corner Halket Avenue and Ninth Street

2

Braddock, Pa., U. S. A. June 4, 1910.

Gentlemen:—

We hereby withdraw all previous quotations, either verbal or written.

Enclosed find copies in duplicate of contracts covering the purchase of licensed McVay & Walker Sanitary Enameled Iron Ware for the period beginning June 1st and ending December 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware.

3

McVAY & WALKER COMPANY.

PETITIONER'S EXHIBIT No. 173.

Filed Nov. 4, 1910.

4

THE WESTERN UNION TELEGRAPH COMPANY.

50 Z XA, 18,
Nx, Pittsburg, Pa., 22-10.,
J. L. Sullwold,
Care Western Supply Co.,

Please wire at once at my expense if you have executed or intend to execute jobbers license *agreement*.

E.L. WAYMAN. 334 P.M.

PETITIONER'S EXHIBIT No. 174.

Filed Nov. 4, 1910.

NORTH AMERICAN TELEGRAPH COMPANY.
TELEGRAM.

June 22, 1910.

E. L. Wayman,
Arrott Bldg., Pittsburgh, Pa.

No Sir and do not intend to

J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 175,

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.
Manufacturers of
Plumbers' Porcelain Enameled Cast Iron Ware
"Southern Beauty"
Lavatories, One Piece Roll Rim and Apron Sinks etc.
Factory, Corner Boyce & 13th Sts.
Main Office and Salesrooms, Corner Boyce & 14th Sts.,
Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 8, 1910.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

We are in receipt of your valued order of the 6th, No. 2863, and beg to thank you for same. You were advised some time ago by E. L. Wayman, Licensor, that new prices would be effective June 6th, and, as your order did not reach us until June 8th, we have no choice whatever in the matter, but will be compelled to invoice same at new prices. These prices have doubtless reached you by this time, and we trust that the above will be satisfactory.

In order to get the benefit of discounts from the resale prices, it will be necessary for you to return the contract which we mailed you on the 4th inst., properly signed, and, if you have not already forwarded same, we would ask that you return it with your reply.

Again thanking you for the order, and awaiting your reply, we are,

Yours truly,
THE CAHILL IRON WORKS,
By H. W. POWELL.

HWP/W

PETITIONER'S EXHIBIT No. 176.

Filed Nov. 4, 1910.

June 10, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlemen:—

Yours of the 8th at hand and noted. Replying to same will say we have not signed contract owing to the fact that we handle the J. M. Kohler Sons Co's goods very largely. We have asked Mr. Wayman for permission to sell these goods before signing same, which permission will undoubtedly be granted. He has not as yet had time to answer our letter. There is no doubt in our mind but what this permission will be granted.

As we are in a hurry for the material in question we trust you will make immediate shipment.

Please bear in mind that we were not consulted at all as to whether the re-sale plan would be agreeable to us or not and w do not propose to sign the re-sale plans unless that they work out to our interests as well as to the manufacturers interests and this cannot be decided upon in a few minutes.

If for any reason after the above explanation you cannot fill this order please wire us at our expense.

Yours very truly,
WESTERN SUPPLY CO.,
per J. L. SULLWOLD.

dict. J.L.S.

PETITIONER'S EXHIBIT No. 177. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A. 2
June 14, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your Mr. Sullwold's favor of the 10th would state that according to instructions we have from the Licensor we will be unable to fill any orders received after June 6th at old prices. We are not positive from your letter whether it will be satisfactory for us to fill order at new 3
price or not.

We understand that you have not yet signed contract, but that you will probably do so in a short time.

Our Mr. Caldwell is in Toledo at present attending the meeting of the Central Supply Association, and upon his return we can advise you definitely what we can do. In the meantime, however, we would like to know if it would be agreeable to ship the sink at the new price.

Yours truly,
THE CAHILL IRON WORKS
By H. W. POWELL. 4

HWP/W

1 PETITIONER'S EXHIBIT No. 178.

Filed Nov. 4, 1910.

June 16, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlement:

We have yours of the 14th and note carefully what you say. The position you take regarding the order in question is not giving us a fair treatment, as it seems to us that all
2 orders taken by your customers prior to June 6th should be filled at the old price. The sink in question was sold to one of our customers when we knew nothing of the new arrangement and our selling price was based on price we had from you. As we accepted this order in good faith from our customer we feel in duty bound to furnish the sink in question and we will have to ask you to ship same at once regardless of consequences. You will therefore please make immediate shipment of this sink even if you are compelled to charge the new price.

As your letter was received during our Mr. Sullwolds'
3 absence, we have placed same on his desk so that he can reply to the balance of its contents after his arrival.

Yours very truly,
THE WESTERN SUPPLY CO.
(Signed) W. P. MILLER.

4

PETITIONER'S EXHIBIT No. 179.

Filed Nov. 4, 1910.

MANNERS
F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Chattanooga, Tenn. U. S. A.
June 20, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Answering your favor of June 16th, the writer, Mr. Caldwell, has looked over the correspondence, and copy of our letter written you June 14th.

It is not our purpose or intention to try to embarrass any of our customers in any manner, shape or form that we can avoid. This license arrangement was put up to us as one to which the jobbers themselves were very favorable indeed. We had been using a patent dredger of our own, and if we had refused to accept the license agreement we would have had a suit for infringement, and you never know how a law suit will come out. We might possibly have found that we were infringing; inasmuch as the patent has stood the test of several law suits, we thought the best thing for us to do was to accept the license.

Now, if the jobbers do not like the jobbers' agreement, for our part, we say by all means, not to undertake to carry it out, but, of course, you know, we haven't the control of our business as we had before.

We certainly do not want to embarrass you, as stated, and we will ship this order to you at once, inasmuch as you say you took it before June 6th. We are requested, however, not to do this. Our doing so might get us into trouble, if you are not particular about keeping the matter strictly confidential.

As to any other orders you may send us, we are not, under the present conditions of our license agreement, in position to take orders except from those who have accepted and signed the regular license agreement. We have taken the matter into our own hands to accommodate you, believing

that it is only just and fair treatment in this instance, your not having had the notice in advance.

It may be that if there are a great many who do not approve of this arrangement the matter will, so far as having the jobber sign the agreement, go overboard in a short while and nothing further done in that respect. This, of course, is mere conjecture on our part, as we know nothing of any definite movement towards that end. Will send the order on soon as possible.

Yours truly,
THE CAHILL IRON WORKS,
Per F. H. CALDWELL,
Prest.

FHC/C

PETITIONER'S EXHIBIT No. 180.

Filed Nov. 4, 1910.

June 23, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlemen:—

Yours of the 20th at hand and contents carefully noted. We thank you very much for your expression in this letter and also that you will ship the goods we had orders for and that were specified before this re-sale proposition was sent out.

We find that a great many jobbers were in favor of a re-sale plan and wrote their manufacturers accordingly, ourselves among others. In doing this the jobbers were assuming that the enameled re-sale plan would be worked out on similar plans as the re-sale plan on pipe. We also find in forming this plan that it was not submitted to some of the best jobbers in the country at all to get their views, but simply railroaded through and put up to the jobbers to come right into line. The writer personally was in Chicago at two different times in May and tried to learn something about the plan but was unable to do so. He was also advised that the manufacturers did not contemplate making any advance in the jobbers price at this time.

It effects our Company just this way—In the first place the manufacturers desire to advance their prices to us about 10%. The proposed re-sale price leaves us less profit than we were getting before. We are large handlers of Kohler's small ware; in fact, put Kohler's small ware on the market in the northwest and started with them when they started. We have their goods illustrated in our expensive catalogues and have six thousand dollars worth of catalogues in the hands of the printers at this time illustrating these goods. We are asked to join hands with the jobber who has not been capable of running his business on a proper basis. We are asked to pay the manufacturers more money for this product, and we are not adverse that the manufacturer should receive reasonable returns as we expect reasonable returns; but we are asked to sell these goods at a less profit than we have been getting; in other words, we are asked to help the manufacturer make more money at our expense.

This don't look like a good business proposition to us. We believe it, on the advise of good counsel, to be in restraint of trade and illegal.

The writer personally has given this matter a great deal of thought. It has always been his desire to work in harmony with the manufacturers and jobbers in this line; but as far as we are concerned we cannot see any good feature in this plan at all.

Received a telegram from Mr. Wayman, which reads as follows: "Please wire at once at my expense if you have executed or intend to execute jobbers license agreement", and we replied "No sir and do not intend to", and we mean every word of it.

Again thanking you for your letter, we are,

Yours very truly,

WESTERN SUPPLY CO.

dict. J.L.S. Per J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 181.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-791022-I

July 9th, 1910.

Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

Dear Sir:—

Referring to our conversation in Chicago with reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

> "If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized."

I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

With kind regards and trusting that you reached home safely, I am,

Yours very truly,

(Signed) E. L. WAYMAN.

1 PETITIONER'S EXHIBIT No. 182.

Filed Nov. 4, 1910.

June 7, 1910.

Mr. Edwin L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask for a written permission to continue to sell this commodity, so
2 that we may continue to deal with this concern, whose goods we have illustrated in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

Yours very truly,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3

4

PETITIONER'S EXHIBIT No. 183.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6101008-R.

June 10, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your letter of the 7th. it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patented process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

Yours very truly,

E. L. WAYMAN,
Licensor.

Received
June 13, 1910.
THE WESTERN SUPPLY CO.

1 **PETITIONER'S EXHIBIT No. 184.**

Filed Nov. 4, 1910.

July 11, 1910

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take
2 the stand that we will use all honorable means to break up this illegal combination.

We shall continue to use Kohler goods.

Yours respectfully,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3 **PETITIONER'S EXHIBIT No. 185.**

Filed Nov. 4, 1910.
EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

4 Dear Sir:—

This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,
E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 187. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A. 2

Aug. 10, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We are in receipt of your valued orders Nos. 7883 and 7820, and would take pleasure in filling same, but in accepting a license we are obligated to sell only those jobbers who have executed a jobber's agreement. Our records show that we mailed you this agreement in duplicate, and, if you will sign and return one copy to us, we will be very glad to fill 3 your order at once.

If agreement referred to is misplaced, we will be pleased to mail you two more copies.

Very respectfully,
THE CAHILL IRON WORKS.

FHC/W

4

1 **PETITIONER'S EXHIBIT No. 184.**

Filed Nov. 4, 1910.

July 11, 1910

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take
2 the stand that we will use all honorable means to break up this illegal combination.

We shall continue to use Kohler goods.

Yours respectfully,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3 **PETITIONER'S EXHIBIT No. 185.**

Filed Nov. 4, 1910.
EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

4 Dear Sir:—

This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,
E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 187.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.

Aug. 10, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We are in receipt of your valued orders Nos. 7883 and 7820, and would take pleasure in filling same, but in accepting a license we are obligated to sell only those jobbers who have executed a jobber's agreement. Our records show that we mailed you this agreement in duplicate, and, if you will sign and return one copy to us, we will be very glad to fill your order at once.

If agreement referred to is misplaced, we will be pleased to mail you two more copies.

Very respectfully,
THE CAHILL IRON WORKS.

FHC/W

1 **PETITIONER'S EXHIBIT No. 188.**

UNITED STATES SANITARY MFG. CO.
Enameled Iron Baths

General offices	and	Works
Arrott Building	Plumbing Goods	Monaca, Pa.

Pittsburgh, Pa.

May 31, 1910.

The Illinois Malleable Iron Co.,
Chicago, Ill.

2 Gentlemen:—

Enclosed find copies in duplicate of contracts covering the purchase of Licensed U. S. Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours very truly,
UNITED STATES SANITARY MFG. CO.
A. H. CLINE, Jr.

3 AHC.-R. *Secretary*

4

PETITIONER'S EXHIBIT No. 189.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburgh, U. S. A.

In reply refer to No. 60709.

Chicago Office
415 Ashland Block

Chicago, Ill.

Illinois Malleable Iron Co.,
Chicago, Ill.

For attention of Mr. Schwendau.

Gentlemen:—

Answering your favor of yesterday, just received, in reference to the tubs, I have taken the matter up with our Louisville people about the order you give and expect an answer tomorrow morning.

Now regarding the 5 fts., I will have to ascertain from them first whether they have any in stock or not, as our tub stock was practically wiped out last week.

Regarding the last paragraph of your letter, will you kindly advise me if it is the intention of your company to sign the jobbers license agreement under the re-sale arrangement on enameled ware. We must have this before we can quote. If you will very kindly give me this information I will be very glad to reply to that part of your letter.

Yours truly,
STANDARD SANITARY MFG. CO.
(signed) W. S. VITLY.

WSV/W

PETITIONER'S EXHIBIT No. 190.

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building Pittsburgh, Pa.

Works Monaca, Pa.

June 11, 1910.

The Illinois Malleable Iron Company,
Chicago, Ill.

Gentlemen:—

We received in this morning's mail your orders #7666 and #7665 calling for flat rim and roll rim enameled Sinks. We regret to state that we cannot execute these orders until we receive your signed resale contract. Our contract with the Licensor, Mr. E. L. Wayman, which went into effect on June 1st, positively prohibits our accepting any orders after June 6th except from jobbers who have signed the resale contract. We regret having to take this action, but we have no alternative whatever in the matter, as our contract with Mr. Wayman is positively binding upon this point. We would thank you to sign and return to us your resale contract as early as possible so that not to delay shipment of your orders.

Yours very truly,
UNITED STATES SANITARY MFG. CO.,
A. H. CLINE, JR.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 191.

Filed Nov. 4, 1910.

All quotations, orders and contracts are subject to car supply, strikes, accidents and causes beyond our control.

F. G. Borden, President — S. Grove, Jr., Vice-President — D. W. Davis, Sec'y-Treas.

Main Office and Works at
Salem, Ohio.

THE NATIONAL SANITARY MANUFACTURING CO.
Manufacturers of
Highest Grade Improved
Porcelain Enameled Cast Iron Bath Tubs,
Lavatories, Sinks, etc.

Salem, Ohio, August 25, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We received your order No. 8001 dated Aug. 23rd. for two plate N-470 Closet Tanks. We regret very much that we cannot see our way clear to fill this order on account of you not thinking it advisable to sign the License Agreement we sent you a few weeks ago, and therefore return the order.

We would further state that we have these fixtures in stock and can make prompt shipment if you would sign the License Agreement referred to.

Trusting we shall hear from you, we remain,

Yours truly,
THE NATIONAL SANITARY MFG. CO.,
(Signed) D. W. DAVIS,
Sec'y. Treas.

1 **PETITIONER'S EXHIBIT No. 192.**

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building Pittsburgh, Pa. Works Monaca, Pa.

May 20, 1910.

The Illinois Malleable Iron Co.,
Chicago, Ill.

2 Gentlemen:—

There has been a deal consummated, whereby Mr. E. L. Wayman has become the possessor, through purchase, of three basic patents which are very valuable in the manufacture of sanitary enameled iron ware, and he has licensed certain manufacturers to manufacture their product under these patents, ourselves being one of the licensed manufacturers, and in licensing all of the manufacturers he has stipulated certain terms under which the goods manufactured under this license shall be sold, and we want to explain to you as
3 clear as it is possible, just the conditions that will exist when this arrangement is put into effect June 1st. Our Mr. Plath expects to be in your City shortly, and will personally try to make this a little clearer to you than can be done by letter.

To begin with, these patents are all bona fide and are quite necessary for the successful manufacture of enameled ware, and Mr. Wayman has purchased these for a cash consideration and is charging royalty on all of the ware made by the different manufacturers. He is charging an excessive royalty to the manufacturer at first, but there is to be a
4 rebate of 80% of this royalty to the manufacturer at the end of a certain period, provided they have lived up to all the agreements of their licensed contract with Mr. Wayman. So far for the manufacturers end of it.

Now, as to the jobbers proposition, the manufacturer will sell to the jobber at certain prices and the jobber will resell to the plumber at certain prices, as enumerated by the Licensor, Mr. Wayman. All goods will be billed to the jobber at the resale price. From this he will be allowed a special concession of 5% for all goods purchased in carloads. Then,

on all high grade baths and lavatories, he will be allowed an additional 7½% from the face of the invoice. On competition tubs and sinks, and competition types of lavatories, he will be allowed an additional 5%. This is all that will be allowed on the face of the invoice. Then, if the jobber has lived up to all the provisions of the contract which he has signed before being able to purchase any goods from licensed manufacturers (which I will explain later on) he will be entitled to an additional 5% at the end of six months for complying with this contract. In addition to this, if he has purchased $10,000.00 worth of goods from all the licensed manufacturers collectively during the six months, he will be entitled to another 2½%. If he has purchased $25,000.00 worth of goods from all the manufacturers collectively in six months, he will be entitled to 5% in place of 2½% as mentioned above. Then, if a jobber has carried out all the provisions of his contract and has purchased $25,000.00 worth of goods in the first six months, he will make a net profit on his sales, on the high grade goods of a little over 21% and on the competition goods a little over 18% on his sales. To illustrate, you will get 5% for carloads a 5% or 7½% as the grade of goods may call for off the face of the bill, then his additional 5% for being good at the end of six months and his additional 5% for quantity purchased from all of the manufacturers if the same amounts to $25,000.00. Now, in order to carry this out it becomes necessary, and is agreed between the licensor and each manufacturer, that before selling any goods to any jobber after June 1st, he must receive from this jobber a contract (sample of which will be submitted to you very shortly). In this contract, the jobber agrees to purchase no goods other than those licensed by the licensor, and should he purchase any goods outside of the goods manufactured by the licensed manufacturers, he will forfeit his right to purchase from the licensed manufacturers and also will forfeit the rebates which are due him on all goods purchased from the licensed manufacturers. This is no pool, but it is an absolute legal agreement, approved by the United States Government, for when the Government grants a patent they also grant a monopoly to the owner of this patent to establish any terms he may wish for the sale or handling of goods manufactured under this patent, and all of the goods manufactured by the licensed manufacturers will be made under these patents and

will bear the label of the licensor stating that they are a patented article, and the jobber does not make an agreement with the manufacturers collectively, but he makes a contract with each manufacturer from whom he purchases any enameled ware. If we were to get an order for one lavatory from a jobber, we would not be able to ship this until we have this jobbers signed contract.

Now, this resale will go into effect June 1st, and the jobber in his contract agrees to not only resell any goods that he purchases after June 1st, but to resell all goods which he now has on hand or has coming to him at the resale price established by the licensor, no matter what the goods cost or whose manufacture.

We have simply given you a brief outline of what this proposition is and if there are any questions you would like to ask, we would be glad indeed to answer them as fully as possible. As stated above, between now and June 1st our Mr. Plath will see you and explain this matter to you as fully as it possible for any one to do, and we believe he will make it very clear to you that this is for the best interests of the jobber, as there will not be a raise in price on putting this into effect.

Trusting that this explanation is clear to you, and if not that you will feel free to ask any question, and assuring you that the manufacturers are doing this with the best interest of the jobbers at heart, beg to remain,

Yours respectfully,

UNITED STATES SANITARY MFG. CO.,

A. H. CLINE, JR.,

Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 193. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Soap Savers,
Concealed Transom Lifts.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa. 2
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680.

114 Dearborn Street, Chicago

6/24/10

The D. M. Gilmore Co.,
Minneapolis, Minn. 3

Gentlemen:—

Please advise me whether or not you have received a copy of the price book from Mr. Wayman. If you have not, I want to keep after him until you are supplied.

You have not as yet returned the Jobber's License Agreement. Beg to inquire whether or not you have signed same and if we will have the pleasure of receiving a copy by early mail.

With kind regards, I am,

Yours very truly, 4

SOD/S.

S. O. DUGGER

1 PETITIONER'S EXHIBIT No. 194.

Filed Nov. 4, 1910.

THE NORTH AMERICAN TELEGRAPH COMPANY.
TELEGRAM.

Minneapolis, Minn. July 28, 1910.

McCrum-Howell Co.,
New York City.

Can you ship fifty Plate E six seventy immediately old price. Wire Answer.

2 THE D. M. GILMORE CO.

3

4

PETITIONER'S EXHIBIT No. 196. 1

Filed Nov. 4, 1910.

Mann C. Eichel. Edwin A. Eichel.

EICHEL & COMPANY,
Manufacturers' Agents
Plumbing, Hardware and Mill Supplies,
We sell Jobbers Only.
P. O. Box 716.
Richmond, Virginia.

Selling Agents 2
Rome Soil Pipe Mfg. Co.
Sheffield Casting & Mfg. Co.
Cast Iron Soil Pipe
and Fittings.

Selling Agents
The National Sanitary Mfg. Co.
Porcelain Enameled Cast Iron Bath Tubs,
Lavatories Sinks, etc.
Morse Iron Works
Malleable and cast iron fittings.

July 8, 1910. 3

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

We are today in receipt of your valued letter of the 6th. inst. and we thank you very much for same.

We trust you will pardon our delay in not answering your letter which was addressed to our Factory and referred by them to us, but we did not have a Catalogue here the day your letter was received and as the Factory had expressed 4
us a quantity of these, we expected same every day, but for some reason or other they were miscarried and only arrived this A.M. We are sending you in this mail a copy of same, and will of course be pleased to furnish you with as many additional copies as you might require.

We have written the Factory to send you at once a copy of our or rather of Mr. Wayman's re-sale price list, and they will do this immediately and you will find Minneapolis in Zone 3 of this price-book. We beg to enclose herewith two

copies of our contracts, which we will thank you to sign and return one copy, the other being your copy, and in addition to the prices and discounts shown in the Price-book and the extra discounts shown in the Contract, copy of which we are enclosing, we can make you the following extra discounts on our WARE:

We have the following preferentials beyond discounts shown as mentioned on preceding page of this letter, which we are pleased to quote you:

5 Year Guarantee Tubs	5%
2 " " "	2½%
Lavatories, except those similar to Plates P 558-559-561-562 as shown in Standard San. Mfg. Co. Catalogue	2½%
Roll Rim Sinks and Slop Sinks	2½%

The prices shown in Price-book and Contract are our lowest Selling Prices on NON-GUARANTEED TUBS, FLAT RIM SINKS, CLOSET TANKS, ETC.

The special preferentials shown above are as stated in addition to the discounts mentioned in Price-book and Contracts, but are subject to same conditions as other discounts.

Now about our WARE, we are making the WHITEST ENAMEL WARE on the market today, and it is GUARANTEED UNCONDITIONALLY against CHIPPING or CRAZING, and then all of our LAVATORIES have the DEPRESSED SOAP CUP CAST in them, which is a feature found only in our WARE.

We know that the WARE will please both You and Your Trade and we assure you that a share of your patronage in this line will be very greatly appreciated by us, and will receive our prompt and personal attention at all times.

Yours very truly,

EICHEL & COMPANY,

By EDWIN A. EICHEL.

E/A

PETITIONER'S EXHIBIT No. 197.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
August 8, 1910.

The D. M. Gilmore Co.,
513 S. Third St.,
Minneapolis, Minn.

Gentlemen:

Answering Mr. Gilmore's favor of August 5th.

Mr. Caldwell, our President, spent lask week in New York; when there he saw Mr. Wayman and other manufacturers and this line was talked over pretty fully. The newspapers have badly misrepresented the suit that the Government is making. The attorney that Mr. Wayman has engaged is regarded as the finest patent attorney in New York and is thoroughly familiar with matters of this kind and has explained the matter correctly. The suit is a case in equity no indictments are made, but it is a case in which the Government undertakes to dissolve the combination, claiming it is illegal and that we have no right to do under the patent what Wayman is claiming to do.

If this is settled adversely Mr. Wayman and the licensees will simply have to do business as they did before. The attorneys claim however that it is perfectly legal under the patent laws and until it is decided adversely attorneys advise us to go on and do business just as we have been doing.

We understood that Mr. Wayman was going to make a special trip to Minneapolis to try to make some arrangements by which everything could be harmonized. You want to understand that we are accepting the license from Wayman and any arrangements that you can do with one licensed manufacturer, you can do the same with us. Should you decide to sign the contract and will agree to carry our

goods in carload lots we will be only too pleased to have you do so and also to give you the exclusive sale of our goods in your city, with the understanding that you handle them in carload lots. You can understand, of course, that any concession Mr. Wayman decides to make that applies to the Standard or other manufacturer we have the same right to make the same concession ourselves.

Should you decide to sign the license to carry the licensed enamel ware, we will be glad to confer with you further, and we hope to get you to handle our line in your city.

With best regards and kindest wishes, we beg to remain,

Yours truly,

THE CAHILL IRON WORKS.

Per F. H. C.

President.

FHC/P

PETITIONER'S EXHIBIT No. 198. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
Aug. 15, 1910. 2

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

We are in receipt of your order of the 11th for two Plate F-102½ 24x33 lavatories which you ask us to ship at once.

Would state that we have not heard from you yet in regard to signing License Agreement, but we trust when Mr. Wayman was in your city a few days since he made satisfactory arrangements, and that you will sign the agreement. 3

We appreciate the business you have been giving us, and we desire to continue receiving same, if possible.

In order to accommodate you, we have decided to ship this order at once, but we would ask you to kindly not consider this a precedent, and not to feel from our action that we can break our agreement. Having accepted a license, we feel that we must live up to the terms of the contract, but, for reasons stated above, as we believe you will sign this contract in a short time, we are going to fill this order. We trust that you will appreciate our action 4 in the matter, and would ask you to kindly keep same strictly confidential.

Yours truly,
THE CAHILL IRON WORKS
H. W. POWELL

H.W.P./W

1 PETITIONER'S EXHIBIT No. 199.

Filed Nov. 4, 1910.

Night Letter

WESTERN UNION TELEGRAPH COMPANY.

1438

Received at Minneapolis, Minn.
260 Hennepin Ave.,

492 z.hn. 30 N.L. 1010 pm.
D. M. Gilmore, Co.,
2 Mpls.

New York wires me they cannot ship tubs unless you sign agreement. I advise your doing so, at once, I will be in Chicago Saturday, hope to see you next week.

S. O. DUGGER.

3

4

PETITIONER'S EXHIBIT No. 200. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Soap Savers,
Concealed Transom Lifts.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa. 2
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680.

114 Dearborn Street, Chicago

8/26/10

D. M. Gilmore Co., 3
Minneapolis, Minn.

Gentlemen:—

The writer just returned to the City this morning.

As I wired you from Kansas City, I received a telegram from the home office notifying me that you had asked them to ship some tubs and that it was absolutely necessary for you to sign the Enameled Ware Contract before they could do so. In my telegram to you I advised your signing it at once.

Upon my return to the office I found a letter from our 4
Secretary in which he states that Mr. Wayman was sending a letter to the jobbers in your territory *who had signed up their contracts.* He has stated to them that they are at liberty to quote from 10 to 12½% below the re-sale price in the district effected by the Western Plumbing Supply Co. You can see from this that it is Mr. Wayman's intention to protect the jobbers who have *signed the agreement* against the cut prices being made by certain jobbers who are not co-operating in the re-sale price.

As I stated to you on two or three different occasions, we certainly want to do business with you and I want you to sign up the agreement so you will receive the benefits of any action taken by Mr. Wayman in matters of this character.

I trust that you have signed this agreement and sent it in without delay. Also that you have favored us with this order.

As I wired you, I am trying very hard to get up to see you the first part of the coming week.

Yours very truly,

S. O. DUGGER.

P. S. I want you to treat this letter as strictly confidential for I am not sure whether or not I am at liberty to give you this information.

PETITIONER'S EXHIBIT No. 201. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

114 Dearborn Street, Chicago

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680. 2

9/12/10

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

Since seeing you I have been in correspondence with the factory and have a letter from them dated Sept. 8th, stating that the back orders they have on their files for you, consist of the following:— 3

7, 5½x30" 5 year guaranteed Tubs
8, 5x30" 5 " " "
5, #649 Lavatories,
40, #620 "

These they say they will be very glad to ship to you at the prices at which the orders were placed as a local shipment, allowing the regular freight.

I trust that you will make up your mind to sign the Agreement and send me additional specifications at the prices in effect to-day to make up a car for shipment. We have talked this matter over so many times, that there is 4 really nothing more that I can say just at this time. As it is, as I see it, a matter that you will have to settle in your own minds as to just what you want to do.

With very kind regards, and hoping to hear from you soon, I am,

Yours very truly,

SOD/S. S. O. DUGGER.

1

PETITIONER'S EXHIBIT No. 202.

Filed Nov. 4, 1910.

9/16/10.

Mr. Sam O. Dugger,
114 Dearborn St.,
Chicago, Ill.

Friend Sam:—

Yours of the 12th inst. in reference to back-order to hand. If you could revise this back-order and ship us:

2

7—5½x30 Bath Tubs—2 yr. Guarantee
8—5 x30 " " —2 yr. Guarantee.
5—#640 Lavatory
40—#660 Lavatory.

We would greatly appreciate this back-order, but, unless you can revise same, we prefer to cancel same. Trust and hope that you will be able and will do all in your power to revise same, and thanking you in advance, we remain,

Yours very truly,

THE D. M. GILMORE CO.

3

4

PETITIONER'S EXHIBIT No. 203. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

Office of
Sam O. Dugger
Western Representative
114 Dearborn Street, Chicago

Telephone:
Randolph 3680. 2

9/19/10

Messrs. D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

I have yours of the 16th asking us to make a change in the back orders which we have on our books for you for "Richmond" Enameled Ware and have referred this matter to the factory. I feel quite sure that they will comply with your request. 3

As I understand it, if they are willing to make this change, you want us to make local shipment on a basis of our making you the usual freight allowance on less than carload shipments. If I am not correct in this, please advise me at once.

With very kind regards, I am,

Yours very truly,

SOD/S. S. O. DUGGER

4

1 PETITIONER'S EXHIBIT No. 204.

Filed Nov. 4, 1910.

L. C. Huesmann, President.
I. G. Smith, 1st Vice-President.
C. E. Gates, 2nd Vice-President & Mgr.
E. V. Brigham, Sec'y. & Treas.

UNION SANITARY MFG. CO.
Successors to the McElwaine-Richards Company.
Manufacturers of
Cast Iron Enameled Bath Tubs, Lavatories and Sinks,
2 Soil Pipe and Soil Pipe Fittings.

Noblesville, Indiana.
June 6, 1910.

D. M. Gilmore Co.,
Minneapolis, Ind.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Union Sanitary Mfg. Co.'s Sanitary Enameled Iron Ware for the period beginning June
3 6th and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
EVB. UNION SANITARY MFG. CO.

4

PETITIONER'S EXHIBIT No. 205. 1

Filed Nov. 4, 1910.

WHEELING ENAMELED-IRON CO.
Manufacturers
of
Sanitary
"PORCELIRON"

Elm Grove, W. Va., June 6, 1910

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering 2
the purchase of Licensed Wheeling Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

We are prepared to offer you a further discount of 5% on the Five-year Guaranteed Bath Tubs and 2½% on the Two-year Guaranteed Bath Tubs purchased from us during the life of this Contract.

These additional discounts will be deducted from the face 3
of the Invoice.

Thanking you for your courtesy and prompt attention, and soliciting a share of your valued patronage, we are,

Yours respectfully,

GWF/MR WHEELING ENAMELED-IRON CO.

4

1 **PETITIONER'S EXHIBIT No. 206.**

Filed Nov. 4, 1910.

F. H. Caldwell, President Established 1875.
J. J. Mahoney, General Manager.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 1, 1910.

2 Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Southern Beauty" Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
THE CAHILL IRON WORKS.

3

4

PETITIONER'S EXHIBIT No. 207.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6181013-R

June 18, 1910.

Chandler Pump Company,
Cedar Rapids, Iowa.

Gentlemen:—

I am in receipt of your telegram of today stating that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market.

Will you not telegraph me upon receipt of this letter that you will execute the agreement in order that the matter may be adjusted in your city at once.

Yours very truly,

(Signed) E. L. WAYMAN.

1 PETITIONER'S EXHIBIT No. 208.

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths

General offices	and	Works
Arrott Building	Plumbing Goods	Monaca, Pa.
	Pittsburgh, Pa.	

May 24, 1910.

Chandler Pump Co.,
2 Cedar Rapids, Iowa.

Gentlemen:

There has been a deal consummated, whereby Mr. E. L. Wayman has become the possessor, through purchase, of three basic patents which are very valuable in the manufacture of sanitary enameled iron ware, and he has licensed certain manufacturers to manufacture their product under these patents, ourselves being one of the licensed manufacturers, and in licensing all of the manufacturers he has stipulated certain terms under which the goods manufac-
3 tured under this license shall be sold, and we want to explain to you as clear as it is possible, just the conditions that will exist when this arrangement is put into effect June 1st. Our Mr. Plath expects to be in your City shortly, and will personally try to make this a little clearer to you than can be done by letter.

To begin with, these patents are all bona fide and are quite necessary for the successful manufacture of enameled ware, and Mr. Wayman has purchased these for a cash consideration and is charging royalty on all of the ware made by the different manufacturers. He is charging an
4 excessive royalty at first, but there is to be a rebate of 80% of this royalty to the manufacturer at the end of a certain period, provided they have lived up to all the agreements of their licensed contract with Mr. Wayman. So far for the manufacturers end of it.

Now, as to the jobbers proposition, the manufacturer will sell to the jobber at certain prices and the jobber will resell to the plumber at certain prices, as enumerated by the licensor, Mr. Wayman. All goods will be billed to the jobber at the resale price. From this he will be allowed

a special concession of 5% for all goods purchased in carloads. Then, on all high grade baths and lavatories, he will be allowed an additional 7½% from the face of the invoice. On competition tubs and sinks, and competition types of lavatories, he will be allowed an additional 5%. This is all that will be allowed on the face of the invoice. Then, if the jobber has lived up to all the provisions of the contract which he has signed before being able to purchase any goods from licensed manufacturers (which I will explain later on) he will be entitled to an additional 5% at the end of six months for complying with this contract. In addition to this, if he has purchased $10,000.00 worth of goods from all the licensed manufacturers collectively during the six months, he will be entitled to another 2½%. If he has purchased $25,000.00 worth of goods from all the manufacturers collectively in six months, he will be entitled to 5% in place of 2½% as mentioned above. Thus, if a jobber has carried out all the provisions of his contract and has purchased $25,000.00 worth of goods in the first six months, he will make a net profit on his sales, on the high grade goods of a little over 21% and on the competition goods a little over 18% on his sales. To illustrate, you will get 5% for carloads, a 5% or 7½% as the grade of goods may call for off the face of the bill, then his additional 5% for being good at the end of six months and his additional 5% for quantity purchased from all of the manufacturers if the same amounts to $25,000.00. Now, in order to carry this out it becomes necessary, and is agreed between the licensor and each manufacturer, that before selling any goods to any jobber after June 1st, he must receive from this jobber a contract (sample of which will be submitted to you very shortly). In this contract, the jobber agrees to purchase no goods other than those licensed by the licensor, and should he purchase any goods outside of the goods manufactured by the licensed manufacturers, he will forfeit his right to purchase from the licensed manufacturers and also will forfeit the rebates which are due him on all goods purchased from the licensed manufacturers. This is no pool, but is an absolute legal agreement, approved by the United States Government, for when the Government grants a patent they also grant a monopoly to the owner of this patent to establish any terms he may wish for the sale or handling of goods manufactured under

this patent, and all of the goods manufactured by the licensed manufacturers will be made under these patents and will bear the label of the licensor stating that they are a patented article, and the jobber does not make an agreement with the manufacturers collectively, but he makes a contract with each manufacturer from whom he purchases any enameled ware. If we were to get an order from a jobber for one lavatory, we would not be able to ship this until we had the jobbers signed contract.

Now, this resale will go into effect June 1st, and the jobber in his contract agrees to not only resell any goods that he purchases after June 1st, but to resell all goods which he now has on hand or has coming to him at the resale prices established by the licensor, no matter what the goods cost or whose manufacture.

We have simply given you a brief outline of what this proposition is and if there are any questions you would like to ask, we would be glad indeed to answer them as fully as possible. As stated above, between now and June 1st, our Mr. Plath will see you and explain this matter to you as fully as it is possible for any one to do, and we believe he will make it very clear to you that this is for the best interests of the jobber, as there will not be a raise in price on putting this into effect.

Trusting that this explanation is clear to you, and if not that you will feel free to ask any questions, and assuring you that the manufacturers are doing this with the best interest of the jobbers at heart, beg to remain,

Yours very truly,

UNITED STATES SANITARY MFG. CO.

A. H. CLINE, Jr.

AHC-R. *Secretary.*

PETITIONER'S EXHIBIT No. 210.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. 610241-B

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. 6/10/10.

Central Plumbers Supply Company,
New York, N. Y.

Gentlemen:—

We are in receipt of your valued order #23753 specifying a number of Plate P-601 sectional lavatories. In view of the fact that the sheets covering re-sale prices applying to our sectional lavatories has not been issued, we will arrange to enter your order and invoice at previous prices, provided you have signed the jobbers license agreement whereby you would be entitled to receive licensed sanitary enameled ware.

Yours very truly,
STANDARD SANITARY MFG. CO.
H. J. G. HECKMAN
Mgr. Quotation Department.

HJGH—

Answered
Jun 11 1910
C. S. Hirschfeld.

PETITIONER'S EXHIBIT No. 211.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. O-71431-BC

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. July 14, 1910.

Answered
Jun 15 1910
C. S. Hirschfeld.

Central Plumbers Supply Company,
New York, N. Y.

Gentlemen:

We are in receipt of your favor of the 9th, reference C.S.H./D., addressed to New Brighton, wherein you advised that you were in receipt of postal card from them in regard to Order #23753 for P-601 Sectional Lavatories, which is marked for shipment to Hodge Bros., Mt. Vernon, N. Y.

In reference to releasing this material and making shipment, regret to advise that we cannot do so, although this material is at present prepared for shipment, but we have instructions not to make any shipment until in receipt of your signature to the Resale Agreement which was forwarded you sometime ago. Upon receipt of your signature we will make immediate shipment.

Yours truly,
STANDARD SANITARY MFG. CO.
Per H. A. CRAIG.

Answered
Jul 20 1910
C. S. Hirschfeld

Answered
Jul 18 1910
C. S. Hirschfeld.

PETITIONER'S EXHIBIT No. 212.

Filed Nov. 23, 1910.

J. A. Frauenheim, President. Carl Falk, V. Pres. A. M. Frauenheim, Treas.

Bell Telephones
134-J Zelienople: 1436 Court Pittsburg.
3584 Beekman, New York

General offices
1104 Union Bank Bldg.
Pittsburg, Pa.
Sales Office, 101
Beekman St. New York.

KERNER MANUFACTURING COMPANY
Manufacturers of
"White Seal" Enamel Ware.
Plant at Zelienople, Penna.

Kerner Mfg. Co.
Zelienople, Pa.
White Seal
Durability and Quality
Guaranteed.

Oct. 11, 1910.

Address all mail
to
Zelienople, Pa.

Central Plumbers Supply Co.,
252 Pearl St.,
New York City, N. Y.

Gentlemen:—

In reply to your letter of the 24th, we beg to state, that we will be glad to sell you, if you will agree to sign the enclosed Jobbers' License Agreement.

Trusting to hear from you, we beg to remain,

Yours truly,
KERNER MANUFACTURING CO.,
CARL FALK.

CF/MD

[NOTE: A Jobbers' License Agreement similar to Gov't's Ex. No. 11 is part of this exhibit but not printed.]

1 PETITIONER'S EXHIBIT No. 213.

Filed Nov. 23, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburg.

June 3, 1910.

TO THE JOBBING TRADE:

The Sanitary Enameled Iron Ware industry has in the past been handicapped by the production and the marketing of quantities of "Seconds" or defective goods, due to im-
2 proper designs, manufacturing methods and equipment. Such goods have not been disposed of by the Manufacturers as other than "Seconds" but some unscrupulous Purchasers have in great many instances disposed of them by mis-representation thereby causing the Public who buy such goods to condemn Sanitary Enameled Iron Ware to the detriment of the industry as a whole.

The basic object of the Licensed Manufacturers in adopting uniform methods of manufacture is to eliminate as far as possible the production and disposal of "Seconds" thereby improving the general quality of their Ware.

3 The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware, made in accordance with these Patented Processes, may be easily identified, each fixture manufactured after June 1st, 1910, will bear the following label.

LICENSED WARE
PATENTED
(Patent Label)

4

and its presence evidences that the best materials and processes have been employed in its manufacture.

Resale selling prices by Jobbers become effective as follows:

In the East of Missouri River Points, June 6th.
West of Missouri River Points to Pacific Coast Territory June 7th.
Pacific Coast Territory, June 9th.

DISTRIBUTION AND RESALE OF LICENSED SANITARY ENAMELED IRON WARE.

To purchase Licensed Sanitary Enameled Iron Ware, during the period beginning June 6th. and ending December 31st. 1910, it is necessary for you to execute a Jobbers' License Agreement Contract, sample of which is attached, with each of the Licensed Manufacturers with whom you may desire to deal. Copies for signature will be sent you in duplicate by each of the Licensed Manufacturers, the execution of which makes you a Licensed Distributor of Sanitary Enameled Iron Ware. Licensed Ware cannot be sold to you, if you have not executed these contracts.

PRICES

The selling prices to the Plumber are enclosed under separate cover in loose leaf form. From these prices you will receive the discounts and rebates named in the "Jobbers' License Agreement," which constitute your profit.

PROFITS.

On the basis that the average Jobber buys in carload lots and sells in less than carload lots the percent of profit on the selling prices will be as follows:

Diff. between C. L. & L. C. L. Prices in Price Sheets Schedules	Discounts named in Paragraph 1 Jobbers Agreement	Discounts named in Par. 7 Jobbers Agreement	Quantity Rebates Named in Par. 8 Jobbers Agreement	Total Approximate Per cent. Profit on selling Prices
1 & 4 5½%	7½%	5%	2½%	19
			to 5%	21
2, 3, 4½ 5 & 6 } 5½%	5%	5%	2½%	17
			to 5%	19

C. L. & L. C. L. PRICES.

In order to obtain the benefit of Carload Prices, the Jobber must buy in carlots for one delivery only, except at "Jobbing Points" where manufacturers are located.

Shipments to these points will be invoiced at C. L. prices in any quantity. Less than Carload shipments to all other Jobbing Points and non-jobbing Points will be invoiced to you at the L. C. L. Prices in the sheets (All subject to the Discounts and Rebates hereinbefore named).

1 In the resale to the plumber it is not permissable to take an order for a carload and ship out in small quantities at Carload Prices. The Plumber is entitled to Carload Prices at any point only when a Carload is actually delivered to one Purchaser in one shipment and paid for as one shipment.

DELIVERIES.

From Jobbers' Stocks—Zones 1, 2, 3, 4 and 5

2 All shipments from Jobbers' Stocks to other than Jobbing Points in Zones 1, 2, 3, 4 and 5, shall be billed F.O.B. Cars Point of Shipment.

If Jobbers find it necessary on Shipments from Stock to Non-Jobbing Points to equalize with other Jobbing Points, such Equalizations shall be made on the basis of the weights given in the sheets and at the rates given in the Equalizing Freight Tariff Schedules.

From Jobbers' Stocks—Zones 6, 7, 8, 9, 10 and 11.

3 All shipments from Jobbers' Stocks to other than Jobbing Points in Zones 6, 7, 8, 9, 10 and 11 shall be billed F.O.B. cars Point of Shipment with actual freight allowed to Non-Jobbing Points.

Direct Shipments from Factory *All Zones.*

Shipments to other than Jobbing Points made direct from the factory on Jobbers orders or sales made direct to Plumbers by the Manufacturers, shall be billed at the prevailing Zone Prices plus freight charges from the nearest Jobbing Point based on the weights given in the sheets and at the rates given in the Freight Equalizing Tariff Schedule.

4 BOXING AND CRATING.

These charges will be made on all goods by the Manufacturers and must be made by all Jobbers in the Resale at the prices given in the Sheets. These prices are net (Subject to the discounts and Rebates *only* that are named in the "Jobbers License Agreement."

The same applies to charges for Drilling, Decorating and other miscellaneous items shown in the Sheets.

SALES BY JOBBERS TO OTHER JOBBERS.

Sales by one Jobber to another cannot be made at any better prices than those established in the Resale Sheets.

GUARANTEES.

The various conditions respecting Guarantees under which the ware is purchased by the Jobber shall not be varied in the Resale to the Plumber. Particular attention is called to the practice that has been established in the past of labelling Non-Guaranteed Baths with the Jobbers Guarantee label. This practice will be considered a violation of the Jobbers' License Agreement.

Additional sheets will be issued as fast as possible on items not covered in the enclosed sheets.

The discounts herein named have been complied with as much care and accuracy as would permit in the short time allotted to distributing these sheets to the jobbing trade, and you will confer a great favor by reporting promptly any apparent discrepancies or errors.

Yours truly,

(Signed) E. L. WAYMAN,

Licensor.

PETITIONER'S EXHIBIT No. 214.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburgh, U. S. A.

JFC—810 4—A.

"Standard" Porcelain Enameled
Baths and Plumbing Goods.
New York Show Rooms
35-37 W. 31st St.
Jas. F. Conran, Manager.

Answered
Aug. 11, 1910.
C. S. Hirschfield.

New York, N. Y.
August 10th, 1910.

Central Plumbers Supply Company,
252 Pearl Street, City.

Gentlemen:—

I have your letter of August 9th and contents carefully noted. Beg to say that we have taken this matter up with our Order Department, but up to the present time, have not received the information, however, as soon as we do, will communicate further with you.

The writer understands your position in regard to this matter fully, but it is also his personal opinion that you ought to sign the Agreement. If the Courts decide that it is illegal the matter will be dropped and the arrangements dissolved, but there is no question in the mind of every lawyer who has examined the instrument, that it is perfectly legal, and we think the courts will so decide, but as you know, getting a decision on questions of this kind is slow work and no one would like a quick decision better than our Company, and in the meantime, we think that you ought to sign this Agreement for the good of the business in general, it will entail no hardship on you, as you are practically living up to the prices agreed on.

Yours respectfully,
STANDARD SANITARY MFG. CO.
J. F. CONRAN,
Mgr.

PETITIONER'S EXHIBIT No. 215.

Filed Nov. 23, 1910.

Design and Durability
unsurpassed.
Trade "Standard" Mark.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. Q-628102-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A.
June 28th, 1910.

Messrs. Mayor-Lane & Co.
New York, N. Y.

Gentlemen:—

We are in receipt of your favor of the 23rd inst. answering ours of the 20th with further reference to placing your order for a number of items of Enameled Ware. We note your general remarks with reference to the same and would state that under the Resale arrangement it would be necessary for you to sign the Jobbers license agreement in order to secure licensed enameled ware. As outlined to you in our several communications there is very little difference if any in the present Resale prices and former prices applying to our Enameled Ware and we trust that after carefully considering the matter you can see your way clear to favoring us with your signature, and are,

Very truly yours,
STANDARD SANITARY MFG. CO.
H. J. G. HECKMAN.
Mgr. Quotation Department.

HJCH

Received
June 29 1910.

PETITIONER'S EXHIBIT No. 216.

Filed Nov. 23, 1910.

W. A. MYLER
Pittsburg, Pa.
New Brighton, Pa.

June 4th, 1910.

Mr. F. G. Ellis,
Mayor, Lane & Co.,
New York, N. Y.

Dear Sir:—

The re-sale arrangement for enameled ware will go into effect Monday next June 6, 1910. The special rebates which you have been enjoying from our company will then be withdrawn and I will send you as soon as possible check to cover rebates due you on goods shipped to and including Saturday June 4th. The terms upon which the manufacturers have agreed to sell to the jobbers under the new plan will be forwarded to you promptly and will, I believe from what I know, be satisfactory to you.

Thanking you for the confidential relations that have existed between us in the past, and trusting that our business relations may be equally as satisfactory in the future, beg to remain,

Yours truly,

W. A. MYLER.

Received Jun 6 1910 F. G. Ellis.

PETITIONER'S EXHIBIT No. 217.

Filed Nov. 23, 1910.

S. N. Ford, President.
D. A. Carpenter, 1st V. Prest.
R. S. Humphryes, 2nd V. Pres.
Reid Carpenter, Sect. & Treas.
T. B. McNeice, Superintendent.

THE HUMPHRYES MANUFACTURING COMPANY

Manufacturers of Hand and Power Pumps of Iron and Brass

Makers of Highest Quality of Sanitary Enameled Ware.

Cable Address
"Humphryes, Mansfield."

New York Office and Warehouse, 636-638 West 34th Street.

New York, N. Y. 6/6/10
Mansfield, Ohio, U. S. A.

Gentlemen:—

We hereby advise you of the withdrawal of all quotations on Enameled Ware.

Yours very truly,
THE HUMPHRYES MFG. CO.,
A. J. LANG,
Mgr.

Received Jun 7, 1910.
F. G. Ellis.

PETITIONER'S EXHIBIT No. 218.

Filed Nov. 23, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Suds Makers,
Concealed Transom Lifts.
Stationary Vacuum Cleaners.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa.
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.
Vacuum Cleaner Plant,
Chicago, Ill.

June 3rd, 1910.

Effective on the morning of June 6th, 1910, all prices on RICHMOND ENAMELED Iron Ware are hereby withdrawn. New prices will be furnished on application.

Yours very truly,
(Signed) HOWARD T. GATES,
Secretary.

HTG-EMT

Received Jun 6-1910
F. G. Ellis

PETITIONER'S EXHIBIT No. 219,

Filed Nov. 23, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 4, 1910.

To the Trade:—

Effective this date all previous quotations, discounts and net prices are withdrawn and are superseded by the price list dated June 1st, on "Licensed" Sanitary Enameled Iron Ware, which you will receive from Edwin L. Wayman, Licensor.

You will note by referring to this price list that we have changed our lists on a number of fixtures. We will advise you just what these changes are in a few days, and will also send you a sheet giving list of our plate numbers and page of price list on which each is shown.

Yours truly,

HRP/W (Signed) THE CAHILL IRON WORKS.

Received June 11 1910
F. G. Ellis

PETITIONER'S EXHIBIT No. 220.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A-71316-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Louisville, Ky. July 13, 1910.

Fleck Bros.,
Philadelphia, Pa.

Gentlemen:—

In going over the list of names sent in by Mr. E. L. Wayman, and which embraces all the jobbers who have signed the resale contract on Enameled Ware, I fail to find you among them. I regret to see that you have so far not seen fit to join with us.

We need your support, as your house is one of the largest and most influential in the business, and has always been a large buyer of Enameled Iron Ware. The plan as proposed will be of great benefit to the jobber, and will insure a satisfactory margin of profit on a line that has heretofore been fiercely competitive, and on which the profit in many instances has been cut down to almost nothing.

We will greatly appreciate your support, and hope you will send us your signed contract. I will be obliged to you if you will favor me with your views on the subject.

Awaiting your reply, I am,

Yours very truly,

THEO. AHRENS
President.

PETITIONER'S EXHIBIT No. 221.

Filed Nov. 23, 1910.

F. H. Caldwell, President Established 1875.

J. J. Mahoney, General Manager.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
August 15, 1910.

Messrs. Fleck Brothers Co.,
46 North Fifth St.,
Philadelphia, Pa.

Gentlemen:—

Yours of the 12th to hand.

We want you to understand that we want all the business we can get and it is unpleasant to us to hesitate the least bit in filling any order a reputable dealer like yourselves sends in to us.

At the same time in accepting the license we are expected to live up to the terms of same.

We note you say this order was taken prior to the time the resale arrangement went into effect. We will therefore ship the same immediately.

It will be advisable until such time as you can see your way clear to sign the jobber's license agreement to advise your salesmen not to take orders for our goods, as it will save us the embarrassment of having to decline them.

We of course do not wish you to quote us as having broken this rule—but are filling the orders on the strength of your statement that the order was taken prior to the time the resale arrangement went into effect.

Respectfully yours,
THE CAHILL IRON WORKS.
Per F. H. C.
President.

FHC/P.

PETITIONER'S EXHIBIT No. 222.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. B-61109-CE

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.
Pittsburg, U. S. A. June 11th, 1910.

Subject—Your order B-1380,
our No. 2471-D.

Messrs. Ronalds & Johnson Co.,
New York N. Y.

Gentlemen:—

Referring to the above mentioned order dated May 31st and which reached us on June 1st, we regret to advise that the same came to hand too late to enable us to do much with it on the basis of the special low prices of May 18th. However, we are furnishing you an assorted car of tubs at those prices, invoice for which under date of June 4th you will receive shortly from our Standard Works.

As the re-sale arrangement is now operative, we would like to know if you desire us to cancel the balance of the order, B-1380, or make shipment of same at regular prices.

Yours very truly,

F. J. TORRANCE,
Per B.

FJT.

PETITIONER'S EXHIBIT No. 223.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

General offices
Arrott Building

Enameled Iron Baths
and
Plumbing Goods
Pittsburgh, Pa.

Works
Monaca, Pa.

June 23, 1910.

The Hotchkiss, Vail & Garrison Co.,
104 East 41st St.,
New York City, N. Y.

Gentlemen:—

We have received several orders from you lately, through our Mr. Ham, but as we have not received your signed resale agreement, we are not in a position to execute these orders, owing to the fact that our contract with Mr. E. L. Wayman, under whose patents we are now manufacturing our enameled ware, positively prohibits our accepting any orders from jobbers who have not signed the resale license agreement. We regret exceedingly to have to take this action, but have no alternative whatever in the matter as our contract with Mr. Wayman is very positive along these lines.

Trusting that you will see your way clear to shortly send us your resale agreement properly executed, as we do not wish to delay you in making shipment of any of these orders, beg to remain,

Yours very truly,
UNITED STATES SANITARY MFG. CO.
A. H. CLINE, Jr.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 224.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

General offices
Arrott Building
Pittsburgh, Pa.

Works
Monaca, Pa.

June 25, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Gentlemen:—

Yours two favors of the 24th received and carefully noted. Now, in regard to any orders that you placed with us before the 6th inst., your not signing the resale contract will, of course, have no effect on these orders as we intend to fill these just as soon as possible, as same have been entered and will be shipped just as soon as it is possible for us to get them out, as we are not trying to work any hardships on any jobber and, of course, can make no rule or contract which is retroactive. We regret exceedingly the position that you feel you are forced to take in regard to signing this resale contract and before cancelling the orders which you have asked us to cancel, which we cannot fill until we receive this resale contract, we want to state to you the Peck Bros. & Co. signed this resale contract yesterday and as we understand it, you are doing business on very similar lines to the Peck Bros. Co. in your City, and thought this might possibly influence you somewhat in signing this contract. This practically puts all of the high grade people in your City on this same basis. The J. L. Mott people have signed, Peck Bros. and the Mason Mfg. Co., also the Federal-Huber Co. We appreciate very much the business that we have been getting from your firm and we would very reluctantly cancel these orders, as we feel that we would like your support in this movement, and believe that in the long run that it is the very best thing that was ever inaugurated for the jobbers. In your case where you are getting equal or better than these prices, it seems to us that it is a great protection to you as it will keep some of the small East side jobbers who are in the habit of butting in on these good contracts of doing so in the

future. We wish that before we cancel these orders which you have sent us, that you will reconsider this matter and let us hear from you further as we believe that possibly the action that Peck Bros. have taken will influence you in your action regarding this contract.

Very truly yours,

UNITED STATES SANITARY MFG. CO.

A. H. CLINE JR.,
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 225.

Filed Nov. 23, 1910.

June 27, 1910.

Mess. U. S. Sanitary Co.,
Pittsburg, Pa.

Gentlemen:—

Answering your of the 25th, at the hands of your Mr. Cline, would say that we regret exceedingly to be in the position which we have been placed in, but we do not feel that we can conscientiously sign this agreement where we have to adhere to your ruling on lump sum prices. We have never yet cut price of tubs, and as we do not sell bath tubs or lavatories separately, without complete trimmings, it means a complete revolution of our billing system, and an invasion of the privacy of our business to such an extent that the hardship exists, as much as you may regret its imposition. The fact that Peck Bros. & Co. have signed the resale agreement would have no bearing as far as we are concerned, if we believe we are right. They have a large jobbing trade throughout New England, where they sell all manner of plumbing supplies in competition with the other jobbers. This feature of their business is not akin to any of ours.

Very truly,

THE HOTCHKISS, VAIL & GARRISON CO.

EWH

PETITIONER'S EXHIBIT No. 226.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building, Pittsburgh, Pa. Works Monaca, Pa.

July 11, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Gentlemen:

Again referring to your Mr. Hotchkiss favor of the 27th ult. in reference to your signing the resale contract, beg to state the writer presented your letter to the Committee that met with Mr. Wayman on last Friday and went into this matter in detail, but owing to the fact that J. L. Mott has agreed to cut out all bump bids and bill his enameled ware separately, the Committee did not think they could do anything in this matter at the present time. We are in hopes that this adjustment can be made later on but for the present it will be necessary for the jobber that signs the resale contract to bill all of his enameled ware separately. We did all that we could to have this matter arranged satisfactorily for you but we were turned down by the Committee for the present. We could like mighty well to see your signature to a contract as we certainly deplore the fact that we cannot ship you goods that you have ordered from us, but as stated in our former letter we have no alternative whatever as our contract with Mr. Wayman is very binding.

Trusting that you will reconsider this and go into the matter a little further and see that if you do not think on a whole this would be a benefit to you while it may be hurtful in a few cases and let us hear further from you, beg to remain,

Yours very truly,
UNITED STATES SANITARY MFG. CO.,
A. H. CLINE Jr.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 227.

Filed Nov. 23, 1910.

June 24, 1910.

Mess. Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Gentlemen:—

We have not yet signed the resale license agreement, which you forwarded us, as there are many conditions about it which conflict seriously with our best interests, as we see them. We would thank you please to let us know the status of our orders placed with you after June 6th, as we have had no acknowledgment of their receipt from you. We take it that orders placed with you previous to June 6th would not be subservient to the conditions attaining after June 6th, and we would appreciate your very prompt reply to us, of our interpretation, as we must base our arrangements on your decision.

Thanking you in advance for your courtesy and expedition, we are,

Very truly,
THE HOTCHKISS, VAIL & GARRISON CO.

EWH.

PETITIONER'S EXHIBIT No. 228.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T62727U

"Standard Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 27, 1910.

Hotchkiss, Vail & Garrison,
New York City, N. Y.

Gentlemen:

Answering your letter per E.W.H. of June 24th, would say that we have not entered orders dated subsequent to June 4th from any Concern who has not entered into the resale agreement.

Our license from the owner of the patents and under which we act arbitrarily fixes what we should do in this matter.

I sincerely hope, for our mutual good, that you will see your way clear to sign the agreement as some two hundred fifty (250) other reputable jobbers in the United States have already signed.

Yours very truly,

FRANCIS J. TORRANCE
V. P.

FJT

Received
Jun 28 1910
The Hotchkiss, Vail &
Garrison Co.

1 PETITIONER'S EXHIBIT No. 231.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T60901U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
2 1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 9, 1910.

Mr. E. E. Haff,
Of F. N. Du Bois & Co.,
New York, N. Y.

Dear Sir:—

I have just wired you relative to your order 4911. It is going to you today to New York as per my advices and you can charge back the freight.

3 I have had the packages marked with the respective names as per order.

I am anxiously awaiting your signature to the re-sale agreement. I have been busy here two whole days and up to eleven o'clock one night and ten o'clock another night, signing up these papers. I just had a message from Chicago where the Chicago and other Western jobbers held a meeting yesterday that they were a unit on the re-sale agreement and have signed and forwarded the papers. There was some slight misunderstanding or disagreement which has been explained and settled.

4 It is the best scheme I know of for regulating and making profitable the jobbing business and the only legalized method that I am aware of. I trust you will not make us wait long or embarrass us by declining orders in the future for we positively will not deviate from our rule. We entered into this agreement in good faith and the proper spirit on the theory that it was beneficial to the jobbing trade and on the positive assurance of at least 95% of our customers that they wanted such an agreement and I must

admit that the manner and volume in which the papers have come before me for signature certainly indicate the same opinion. 1

Yours very truly,

FJT

FRANCIS J. TORRANCE.

2

3

4

1 **PETITIONER'S EXHIBIT No. 232.**

Filed Nov. 23, 1910.

June 10, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Mr. Torrance:—

The writer is in receipt of your favor of the 9th inst., and we wish to thank you at this time for the many favors
2 we have received from you in the past, and particularly for the favor you did us last week, in taking care of us at old price on 1300 and odd Nemo Tubs, sold on contracts, as we did not have a loss on these.

Referring to the contract which you have sent us, we would not care to sign this for several reasons. In the first place, the resale price and the rebate scheme are both distasteful to us. We have to carry our customers on new work from three to five months, and on the resale proposition we would have to sell our goods within 5% of cost, and the other two fives would be in the hands of the manu-
3 facturers for seven months, taking this much capital out of our business for a long length of time.

Also we would have no chance in competing with such people as Colwell Lead Co., who are manufacturing jobbers. We do not know what restrictions are placed on them to make them forfeit a large sum of money in case they were compelled to buy some goods from an outside manufacturer, or should they cut the resale price. Also in reference to the resale price, from past experience, we have no confidence in the jobbers in New York City maintaining this resale price absolutely.

4 Furthermore, while you give us your assurance that this entire plan is perfectly legal, at the same time we have never yet known half a dozen lawyers to agree on any one thing, and we don't want to take any chances of sending either Mr. Du Bois, who is over eighty years of age, Mr. Blauvelt or myself to Atlanta for fifteen years, more or less.

Taking the whole scheme from the start to finish, in its entirety, it is distasteful to us, so we have decided we will take the tubs which you kindly protected us on, and fill the existing contracts which we have on our books, and

practically discontinnue, for the time being, pushing the sale of enamel ware. We will lend all our efforts to pushing the sale of lead goods which we manufacture, and other lines which we may be able to handle legitimately as independent business men.

Very truly yours,

EF:M F. N. DU BOIS & Co.

Hoping our pleasant personal relations will continue as in the past, we remain,

Very truly yours,

EEH/M. F. N. DU BOIS & CO.

The Process Patents enumerated above cover substantially all the ways in which Sanitary Iron Enameled Ware may be manufactured economically and with durability and are essential to the production of Enameled Ware of the highest quality.

In view of the conditions that have heretofore prevailed in the manufacture and sale of Sanitary Iron Enameled Ware, it is believed that the value of the Patents named will be better preserved and the Trade conditions improved through standardized and co-operative methods of Manufacture and distribution and the maintenance of high quality will be enhanced by the possibility of an assured reasonable and legitimate profit to the jobber.

The terms and conditions under which the various companies have been licensed provide only a reasonable Manufacturer's Profit and it will be the aim of the licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I therefore, ask your support in the effort to better general conditions and to improve the quality of the ware, thereby increasing the use of the various products to mutual advantage.

Yours very truly,

Licensor.

[illegible]

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [illegible]

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

JUDGMENT FOR RESPONDENTS.

FILED FEBRUARY 14, 1908.

(28,004)

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

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1

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

No. 17.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

2

THE STANDARD SANITARY MANUFACTURING COMPANY, AND OTHERS,
Defendants.

Pittsburgh, Pennsylvania, February 14, 1911.

Testimony on Behalf of the Defendants.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

3

Mr. NOBLE: Counsel desires to have noted the appearance of Mr. Marshall A. Christy, as of counsel for the defendants. Counsel for defendants intend to offer a certified copy of the Arrott patent, being a certified copy of the exhibit put in evidence by the Government as Exhibit No. 134. That has not yet arrived. We will also offer a certified copy of the decree in the case of the Standard Sanitary Manufacturing Company vs. The J. L. Mott Iron Works, sustaining that patent.

4

Mr. GROSVENOR: I will note any objections which I have to the decree later on.

Mr. NOBLE: We also offer the opinions of the Circuit Court below, delivered by Judge Cross, and the opinions of the Circuit Court of Appeals in the same case, delivered by Judge Buffington.

GEORGE SHIELD, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, address and occupation?

A. George Shield, 515 Fifteenth Avenue, New Brighton, Pennsylvania.

Q. What is your occupation?

A. General foreman of the Enameling Department of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company.

Q. For how many years have you been in the employ of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company?

A. Actual employment, nineteen years; went to work for them in June, 1888, and worked until May, 1892, and was away four years, and returned, and have been working there ever since.

Q. Were you ever an enameler in those works?

A. Yes, sir.

Q. Please state for how many years you were an enameler? A. About six.

Q. Did you ever work as an enameler elsewhere?

A. No, sir.

Q. During the time you were an enameler, will you please state what kind of dredges you used to do your work?

A. A short handled dredge, in which the handle was struck with a tapper, for the purpose of vibrating the dredge to get the powder through.

Q. Were you also familiar with the use of the long handled dredge? A. I was.

Q. And have you also been familiar with the use of the Arrott dredger? A. I have.

Q. Now, Mr. Shield, I will ask you in your own way to describe each of those dredges, first the short handled dredge, second the long handled dredge, and third the pneumatic dredger or Arrott dredger.

THE WITNESS: Describe the dredge and the manner of using it?

Mr. NOBLE: Describe the dredge and the manner in which it was used.

Mr. GROSVENOR: Will you have any of those dredges here for an exhibit? 1

Mr. NOBLE: Yes, I will say in an offhand way, that I will do that. I will try to get one here later.

A. The short handled dredge was made from sheet iron —the bowl of it was made from sheet iron, and was about eight or nine inches in diameter. There was a band fitted around the bottom of it for the purpose of holding the wire mesh through which the powder was sifted. There was a band fastened to that with a socket attachment, and in that socket a wooden handle was fastened, generally a sledge handle was fastened into the socket The enameler held that on the back of his elbow, the back end rested on the back of his elbow, while the middle of the handle rested in the hollow of his hand. There was what is known as a tapper, a piece of round iron, which was curved with a place to rest the hand, and that was used to beat the dredge and cause the vibrations to sift the powder. When that was used, the man standing before the tub had to work the dredge in one hand in a horizontal movement, and at the same time keep up a vertical movement with the right hand. The left hand kept moving the dredge back and forward in a horizontal manner and the right hand worked the tapper in a vertical manner. 2 3

Q. About how long was the handle to that short handled dredge?

A. The wooden handle was about three feet; the socket was about six or eight inches.

Q. So that the total length from the edge of the sieve which contains the powder, to the end of the handle would be—

A. (Interrupting): Would be between three and a half and never over four feet.

Q. Let me ask you a question or two, to bring out what I have just understood you to say: As I understand you, the enameler held this dredge with his hand, about 30 inches or so from the end of the handle to the dredge, the end of the handle resting under the point of his elbow; is that correct? A. That is correct. 4

Q. So with the same hand which held the dredge he had to move it over the article which he was enameling?

A. Yes, sir.

Q. If he was enameling a bathtub 5 feet, 10 inches long, he had to carry that dredge in this one hand from one end of the tub to the other as he put the enamel over the various portions of the tub? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. While he was conducting that horizontal movement, carrying the dredge over the surface of the object which he was enameling, I understood you to say that with the other hand he held the metallic tapper or hammer which enclosed the handle and beat it up and down, so that as it struck the handle the sieve vibrated and the enameling powder went through the holes of the sieve? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. While by his other hand he distributed the powder over the article which he was enameling? A. Yes, sir.

Q. Now, before we go into the further question of enameling, please describe the long handled hand dredge?

A. The long handled hand dredge, the bowl was made just the same on that, in the same manner as on the short handled dredge, only it was about ten inches in diameter.

Q. The short handled one having been about how much?

A. Eight.

Q. So that there was an increase of about two inches?

A. Yes; the handle was made from seamless tube and was seven feet long from the—

BY MR. GROSVENOR:

Q. Seamless tube?

A. Yes; that is the name that we know it by, and it was seven feet long and was attached to the bowl of the dredge, being split part of the way up and then spread to fit around and about thirty inches from the bowl on that handle there was a clamp fastened there, to which was attached a chain, and that chain running up and over a pulley with a counterbalance at the other end to help sustain the dredge, and it was beat in exactly the same manner as the short handled dredge, with a tapper made from round iron with a wooden handle, and it was beat in the same manner to get the vibration, that is, to vibrate the sieve.

Q. Was the long handled dredge of which you have spoken, supported and guided in the same manner as the

short handled dredge, except for this counterweight of which you have just spoken? A. Yes. 1

Q. So that the enameler held the handle, the end of it coming under his elbow, and supported it further down on the handle by his hand?

A. Yes, sir.

Q. And guided with that same hand the dredge over the article which he was enameling as he put the enamel on that article which was being enameled? A. Yes, sir.

Q. While he was doing that, at the same time he had the same operation with the other hand, to hammer the handle to cause the sieve to vibrate, and thus make the 2 enameling powder go through; is that correct?

A. Yes, sir.

Q. Then with both the long and the short handled dredge the enameler had with one hand the support of the dredge and the guiding of the dredge over the article to be enameled, and with the other hand the hammering of the dredge, to cause the vibrations? A. Yes, sir.

Mr. GROSVENOR: I object, because it appears that in the long handled dredge was held by a chain, whereas with the short handled dredge there was no chain. 3

BY Mr. NOBLE:

Q. Your answer is correct, except that the long handled dredge had the counter-weight support; is that correct?

A. Yes, sir; and it was necessary for a man to hold it up, too.

Q. To support the weight? A. Yes, sir.

Q. So with the long handled dredge there was a counterweight assisting the man's arm; in the short handled dredge there was no support except the man's arm; is that correct? A. Yes, sir.

Q. In the long handled dredge it was partly supported 4 by this counterweight; is that correct? A. Yes, sir.

Q. Not in whole? A. No, sir.

Q. Now, give me a description of the Arrott or pneumatic dredger?

A The Arrott dredger—

Mr. GROSVENOR: Is the word "dredge" or "dredger"?

Mr. CHRISTY: In previous litigation concerning the

1 Arrott patent, it was customary to designate the hand operated dredge as a "dredge," but the automatically operated dredger is known as a "dredger."

By Mr. Noble:

Q. Now, will you please describe the Arrott automatic dredger?

A. The Arrott dredger has a bowl nine inches in diameter, as I can remember. I never measured that. The handle is four foot six inches long, to which is attached a pneumatic hammer or vibrator, which is about nine inches
2 long, making the total length from the end of the hammer to the bowl of the dredge about five foot three inches. On the hammer there is a button, which allows the air to get in the hammer for the purpose of vibrating it, and the enameler holds one hand on the hammer and the other on the handle, having both hands, the flow from the dredger, on account of the rapidity of the stroke being continuous he just simply stands in one position and moves the dredger over whatever he is making.

Q. Whatever he is enameling?

A. Whatever he is enameling.

3 Q. The Arrott dredger is used with or without counterweight?

A. On bathtubs it is used at our factory with counterweights.

Q. So that the one thing about the Arrott dredger is that the enameler has both hands which he may use to guide the dredger over the surface of the article to be enameled? A. Yes, sir.

Q. Whereas, by the old hand methods, he had to support and guide with one hand? A. Yes, sir.

Q. In the manner which you have described?

4 A. Yes, sir.

Q. Now, will you describe the fineness of the mesh as between the two types of dredges?

A. Ten meshes to the inch difference.

Q. That is to say, the Arrott dredger is ten meshes to the inch?

A. Finer; we use a fifty mesh wire on the Arrott dredger. We did use a forty on the old hand dredge.

Q. That enables you to use a finer enameling powder, does it not? A. Yes, sir.

Q. Now, was there any difficulty—going back to the old hand dredge, either with the long handle or the short handle—was there any difficulty in enameling on the surface of the article wherever you wanted to put it? 1

A. There was.

Q. Explain those difficulties, will you, please?

A. In using the tapper, it was impossible to get a continuous flow of enamel—the enamel going through in puffs, just as the dredge handle was struck; it was a hard matter to place just where you wanted it, on account of having only one arm to guide the dredge with.

Q. Now, as to the coming through in puffs, you mean that you could not get the blows fast enough? 2

A. You could not get the blows fast enough to get it continuously.

Mr. GROSVENOR: These questions are somewhat leading.

Mr. NOBLE: I realize that, but I am endeavoring to bring it out as quickly as possible.

Q. You mean the blows on the hand dredge could not be made fast enough to get a continuous flow of powder from the sieve? A. Yes, sir. 3

Q. It was in puffs? A. Yes, sir, intermittently.

Q. Following the blows of the hammer? A. Yes, sir.

Q. How about the flow that you can get from the Arrott dredger?

A. The flow from the Arrott dredger is one continuous stream.

Q. As you move the Arrott dredger over the surface of the article, then, is the enameling powder deposited equally all over the surface or not?

A. It is deposited equally all over the surface.

Q. Was that true with the hand operated dredge? 4

A. No, sir.

Q. Explain why it was not true?

A. The reason it was not true was because with the pneumatic dredger, you have a continuous vibration.

Q. That is, the blows are very, very rapid?

A. They are so rapid that it is hardly possible to realize that they are. It is one steady vibration.

Q. With the hand tapper, it was only possible for a man to tap so fast. He could not get anything near a con-

1 A. There is no question about that. That is true, and it is known by all enamelers.

Q. Will you state whether or not there is any other advantage in the enamel being put on thin, beside the one which you just mentioned, of its fusing better to the article enameled—to the iron?

A. Its durability and its being a smoother and better article all the way through.

Q. You said awhile ago that it would withstand a blow better? A. It will.

Q. As I understand you, this enamel accommodates itself
2 more to the expansion and contraction of the iron on which it is placed?

A. When the enamel is thin, there is far less chance of its leaving the iron by cause of expansion or contraction.

Q. In other words, it is more elastic?

A. Well, I don't know if it is more elastic, but when it is thin, there is not as much on there, and there is not the tendency to flake off, by reason of expansion or contraction.

Q. As I understand what you said about the hand dredge, you could not get the powder on by that method as accurately or as smoothly; is that correct?

3 A. That is correct; yes, sir.

Q. Now, comparing the enameled ware manufactured by the hand dredge, and the enameled ware manufactured by the Arrott dredger, will you please state which is the better article?

Mr. GROSVENOR: I think that question is rather too broad. Do you mean to confine yourself to a comparison between this enameled ware made today by the Standard Sanitary Manufacturing Company under the Arrott patent, and that which they made previously?

4 Mr. NOBLE: Within the experience of this witness, of course.

Mr. GROSVENOR: When he was an enameler?

Mr. NOBLE: And when he was the superintendent, too; in other words, during his experience covering his eighteen years there.

Mr. GROSVENOR: That is all right.

A. It is far superior to anything we ever made. The

ware now is far superior to anything we ever made when using the old hand dredge. 1

Q. What was the character of the surface of the enamel when you used the old hand dredge?

A. The surface of the enamel was not near as smooth as it is now.

Q. Well, as to its porous qualities?

A. The enamel, when we used the old hand dredge, was of a porous nature and did not have the finish of the enamel which we have at the present time, or have had, since using the Arrott dredger.

Q. With which dredge can you put the enamel on more quickly? A. The Arrott dredger. 2

Q. What, if any, advantages is there in that feature of the Arrott dredger in the manufacture of enameled ware?

A. It allows— It enables us to manufacture a more durable, smoother, and better article. It enables the enameler to do more work in less time with less effort to himself. We are enabled to get out a far greater production from our furnaces and our company is benefited in view of that increased production and in the better goods which we make. Our enamelers also make more money.

Q. In other words, the fact that you can put on the powder faster has these many advantages which you have mentioned? 3

A. All attributable to being able to put on the powder faster.

Q. Now, is there any advantage in point of speed in getting on the enamel with respect to the heat of the article which you are enameling, its retaining its heat after it comes out of the furnace?

A. There is a great deal of advantage in that.

Q. What is the advantage?

A. Under the old practice of using the hand dredge, an enameler got his tub or his piece of ware just as hot as ever it was possible to get it, sometimes got it hotter than he ought to, on account of the process of putting the enamel on, being so slow, and he wanted to get all the heat that he could in his casting. That is detrimental in view of the fact— 4

Q. (Interrupting): You mean this excessive heat is detrimental?

A. This excessive heat is detrimental, in view of the fact that when you subject a base or first coat to more than a

1 certain amount of heat, you tend to destroy the life or adhesiveness, the affinity between that base and the enamel on one side and the iron on the other. With the use of the Arrott dredge, the enameler today just gets his tub, or the article which he is enameling, just so that the base or first coat is nicely fused, because he knows he can get around his tub quick enough and get it back in the furnace with the enamel powder fused to it by the use of the Arrott dredger.

Q. With the old hand dredge, and also considering this excessive heat to which the tub was heated, could the enameler get around his tub or the article which he was enameling
2 with sufficient speed to get his enamel on always before the article lost its heat?

Mr. GROSVENOR: I object to that question. That is leading and—

Mr. NOBLE: Just strike it out bodily.

Mr. GROSVENOR: No, leave it as it is. Just read the question.

The stenographer then read the last question.

Mr. NOBLE: Answer the question.

A. No. Invariably the tub would become chilled before
3 he would get anything near the amount of enamel on in one dredge that he does now with the use of the Arrott dredger.

Q. You said when the hand dredge was used the casting was heated to a greater heat than it is now necessary to heat it? A. Yes, sir.

Q. Could the enameler, by the use of the hand dredge, get his powder on anything like as fast as he can with the Arrott dredge? A. No, sir.

Q. Was it feasible, in your experience and observation, for the enameler to get over the article with the hand dredge
4 before it had lost its heat?

A. He had to get over it before it lost its heat, and he had to be extremely light with his powder; he could not hardly get any powder on.

Q. Then, in order to get over it, before it lost its heat, he had to skimp on the powder; is that correct? A. Yes, sir.

Q. Have you known of instances where he did not succeed in getting over it even in that manner?

A. I have known of instances, lots of them, where he did not succeed in getting over it; lots of little things would

go wrong, and he could not get over the bathtub before it lost its heat. 1

Q. Well, just describe what you mean by little, trivial things?

A. Well, the man in turning the table might be delayed; he might be delayed for almost a minute, and then he would go on again, and if the man had started around his tub by that time, the tub would be chilled off and he would have to stop and put it in the furnace again. He might get enamel material that was a little bit coarse, and he would start on his tub, and would not have the power to force it through with his iron, couldn't beat it hard enough, and 2 he would have to stop and put the tub back in the furnace.

Q. If there were difficulties such as you have mentioned, encountered in enameling the tub, then the enameler was not able to complete his work and would have to put the tub back, and so much more time was expended in enameling it? A. Yes, sir.

Q. What effect did that have on the quality of finish gotten on the tub?

A. It has a very detrimental effect on the enamel. Take a bathtub and get one side or two-thirds of that filled with a sufficient amount of enamel, or a portion not within one- 3 quarter or one-fifth of what is on the other side, and you place that bathtub in the furnace for the purpose of fusing the enamel that is on there, and by the time the regular side is fused, the portion that has not been covered, or only slightly covered, will be destroyed, and that will cause the enameler trouble when he goes to apply his next coat; he may get it covered up or it may go to the bad when it is put in the factory or after it is sent out to the trade.

Q. In other words, it may destroy the adhesive quality?

A. Yes, sir.

Q. And when the enameler attempts to repair that dam- 4 age, and enamel over that, he may produce what is in fact a defective article?

A. He may produce an article that would primarily pass inspection at that time, but the chances are, nine times out of ten times, that article would be returned to us as defective goods.

Q. These instances which you have mentioned, were they or not of frequent or infrequent occurrence in the days when goods were enameled by hand?

A. Those things occurred frequently.

Q. Will you contrast the manufacture since you have used the Arrott dredger, covering the same ground as you have just done with the hand dredge?

A. Since we have had the pneumatic dredger or Arrott dredger introduced, and got it working in our factory, we have made better goods. We have less trouble, in view of the fact that when a man picks up the dredge to go to work, having both hands to use it—to guide it—and being able to regulate the flow of his enamel automatically and the speed with which he can perform that operation, that all tends to obviate the troubles we did have with the old hand dredge.

Q. Do they only tend to obviate those troubles, or do they obviate them?

A. I beg your pardon, they do obviate them.

Q. Suppose the enameling powder is somewhat coarse today, how can the enameler use that powder?

A. He just stops for an instant, reaches down to his side where there is a valve, turns on a little more air, and the added pressure makes it go through.

Q. In other words, it makes it hammer harder?

A. Yes, sir; makes it vibrate harder.

Q. And what did the enameler have to do with the old dredge in such case?

A. He had to pound his arm off, and after the tub was finished, would have to get better powder.

Q. Did it sometimes happen that in such cases as that he could not get the powder through by hammering?

A. Very rarely that he could not finish the tub; he might have to put on five dredges, or maybe go over it six times, to get enough on, but he would have to finish the tub or the tub would be a total loss.

Q. Whereas, by the use of the Arrott dredger, that result is obviated by the turning on of more air and getting a harder blow; is that correct? A. Yes, sir.

Q. Now, going back to the tubs, which were enameled by the hand method, how did the enameler succeed in getting the enamel on with greater smoothness than would be indicated by the intermittent deposits of the enameling powder made by the hand blows? How did he succeed in getting the surface smooth?

THE WITNESS: With the use of the old hand dredge?

MR. NOBLE: Yes.

A. It was very rare that there was a smooth tub made. 1

Q. And in an effort to make it smooth, what did he have to do?

A. After his tub came out with one dredge on, it was evident that there were blue places in it, and then it was necessary for him to put as much powder as he could on those blue places and touch as little as possible on the places where it was white. He knew that it was heavy because it was white, and he knew that it was somewhere thin, because there it was blue.

Q. State whether or not there was any danger in putting the powder on thick in one place and thin in another, in 2 getting the enameling powder to fuse properly?

A. There is always danger of that. Because where the powder is applied too thick, in fusing in the furnace it is liable to run, as we call it—just slide a little bit—and that will make a ridge or streak on the surface of the tub, and that means that that tub is no good, only for an inferior article.

Q. Then, if you got it on too thick and you put it back in the furnace, it had a tendency to melt and flow and spoil the article? A. It had a tendency to run.

Q. Whereas, with the change now, it fuses with the iron 3 at once and with the enamel which has been previously deposited; is that correct? A. Yes sir.

Q. Was there any difference in the manner or care with which the article which you were enameling had to be handled in putting it back in the furnace by the hand method and by the Arrott method?

A. There is a great deal of difference.

Q. Will you please describe what that difference was?

A. On account of the slow method, or the length of time which it took to apply the powder to a casting, under the old method the casting became chilled off. It was necessary 4 in putting the fork under the rim of the tub to put it in the furnace—it was necessary in doing that, to exercise great care, so that you could slip the fork in there without the slightest bump. In lifting it off the table, it was necessary to use great care to avoid bumping it. Then, in putting it into the furnace it was necessary to exercise great care so that you would not bump it too much in putting it down on the angle irons; if you did that, that powder not being fused to the iron, it would slip or slide down, which would

1 give you a heavy roll of powder. If a man did that before he got the tub in the furnace, and he saw it, it was necessary to put it back on the table and turn it over and take an asbestos cloth or glove and scrape that out, and then take a pair of bellows and smooth it out, and practically all of that dredge would be lost.

Q. Explain what you mean by putting the tub in the furnace, so that when the Court comes to read this testimony he can know what you mean by taking it off of the table with the fork and putting it in the furnace. Just describe how a tub is heated in the furnace and brought out and put
2 on the table; what is done with it when it is on the table, and how it is put back again.

Mr. GROSVENOR: This description is supposed to cover what time?

Mr. NOBLE: When using the hand method and when using the Arrott method.

A. In a bathtub enameling furnaces, in the centre are placed two rails or two angle irons for the purpose of raising the bottom of the bathtub up from the bottom of the furnace. The table on which the bathtub is enameled is similar, in
3 that it has small rails or angle irons to keep the tub off the table, also sides and hoods for the purpose of holding it in there—

BY Mr. GROSVENOR:

Q. You do not mean by a hood something that is held over it?

A. No, sir; it is around the rim to keep the enamel from getting on the outside of the tub. We use a fork made from two inch pipe with an iron "T" welded—

BY Mr. GROSVENOR:

4

Q. Is this a description of the way you do it today, or as you did it before you got the Arrott patent?

A. This is the way all bathtubs have always been enameled, to the best of my knowledge. The fork is made with an iron "T" welded on one end, to which is attached two movable prongs; these prongs being movable to allow us to adjust the fork to the different widths of bathtubs—that is, the prongs; these prongs are put under the rim of the bathtub, and it is then lifted by a crane—that is, the fork is hung

on the crane and the bathtub is lifted from the truck, or whatever it is setting on, and put into the furnace resting on these rails or angle irons. It is left in the furnace until the first coat or base coat is thoroughly fused. 1

Q. That is to say, when you first put the tub in cold, it has on it a base or slush coat, is that correct? A. Yes sir.

Q. And that is put on before it comes to the enameler?

A. That is put on before the enameler gets it.

Q. Now, with that slush coat on, the enameler takes it and puts it in the furnace and rests it on the angle iron or rails?

A. Yes; after the first or slush coat is properly fused, it is brought out and put on the table. 2

Q. How do you bring it out?

A. In the same manner as it is put in, by the use of that fork.

Q. And then the fork is slipped to one side?

A. It is put under the end of the tub and just dropped.

Q. Where is the tub deposited after you have taken it out of the furnace?

A. The tub is taken out of the furnace and put on the table.

Q. Now go ahead. What happens next? 3

A. Then the helper or rim dredger turns the table over to the position in which it is best suited for the enameler to dredge it at; the enameler starts and dredges the inside of the tub, while the rim man dredges the rim. After a sufficient amount of enamel has been put on that tub, the rim man holds the table up straight; they take the fork and slip it under the rim of the tub again and place it in the furnace to bring it up to a certain point of heat, which is a matter of judgment always with the enameler. That process is repeated until the piece is finished.

Q. Now, the table on which the tub rests is capable of being moved so that the tub can be put in a convenient position for the enameler to put in the enamel? 4

A. Yes; on the inside.

Q. And for the rim enameler to enamel the rim?

A. Yes, sir.

Q. That was true with the hand method? A. Yes, sir.

Q. And is also true as to the Arrott dredger?

A. Yes, sir.

Q. Can that table be tilted at different angles while the enameling is going on? A. It can.

Q. And is?

A. According to the necessity of the case with the enameler.

Q. When the enameling was being done by hand, did you have a man whose especial duty it was to turn the table?

A. Yes, sir.

Q. In enameling by air, has it been possible to develop a method whereby you could dispense with the services of that man?

A. Yes, we have developed a method where we can now use two men.

Q. Whereas formerly you sometimes used how many men? A. Three, and sometimes four.

Mr. GROSVENOR: In speaking of the hand method, you were speaking of the enameling of tubs?

THE WITNESS: The actual number of men employed in enameling one bathtub.

Mr. GROSVENOR: I don't want that confused with sinks or lavatories.

THE WITNESS: As far as my testimony has gone, I have been talking about bathtubs, even if I did not mention it each time. The manner of putting it in and bringing it out of the furnace has always been the same but the manner in which it is enameled now is different.

Q. As I understand it now, you have developed a method of operating the table, since you have had the use of the Arrott dredger; is that correct? A. Yes, sir.

Q. By that method of operating the table, you have gotten rid of the necessity of employing a man to turn the table; is that correct? A. Yes, sir.

Q. The table is now turned in what way?

A. The table is operated by mechanism controlled by a foot valve, that foot valve being controlled by the enameler himself who enamels the inside of the tub.

Q. By him putting his foot on this foot valve he can turn the table in various directions?

A. He can make it revolve around.

Q. So as to turn the tub from one end to the other?

A. So as to follow the lines where he is dredging.

Q. And he can turn it backwards and forwards? 1

A. Not the enameler; the rim man does that.

Q. The rim man can turn it backwards and forwards, and the enameler can turn it from end to end, so as to get to the inside to enamel it? A. Yes, sir.

Q. And by this device the services of one man are dispensed with? A. Yes, sir.

Mr. GROSVENOR: To which device are you referring?

THE WITNESS: The manner in which we operate our table now.

Q. Is it feasible for a man to use the hand dredge with a table operated in the manner which you have described? 2

A. No, sir.

Q. Just tell why?

A. A man using the old hand dredge, either the short or the long handled dredge, it is necessary for him to step from one side to the other, backwards and forwards, and move around to counteract the swing of the long handled dredge, or to reach places, if using the short handled dredge, that he could not get at by standing in one place. Consequently a man could not operate the foot valve—

Mr. GROSVENOR: You are talking of using two men now, are you, on a tub? 3

A. Yes, sir.

BY Mr. NOBLE:

Q. So that by the introduction of the Arrott dredger, you are able to dispense with the services of one man in enameling the tubs? A. Yes, sir.

Q. Now, going back to the matter which you described awhile ago, of getting the tub in and out of the furnace, when the enameler used the hand dredge, will you state whether the precautions which you described as being necessary then, and the accidents which you described as happening, flow from the use of the Arrott dredger? 4

Mr. GROSVENOR: I object to that question. It is too indefinite. I do not recall what accidents the witness referred to. He has described the taking of the tub out of the furnace, and he said that that was the method which has always prevailed in taking the tub out and putting the tub in the furnace.

1 By Mr. Noble:

Q. Well, Mr. Shield, will you again, for the enlightenment of my brother, state the precautions that had to be used in putting the tub into the furnace, and in handling the tub, or the article to be enameled, when the method of enameling was the old hand method.

Mr. Grosvenor: Do you mean precautions which do not have to be observed today?

Mr. Noble: No. I will get this description in first, however.

2 A. When we used the old hand dredge it was a slow process, and for that reason the tub lost its heat and got comparatively cool before the enameler was able to finish his dredge or his coat, and that enameling powder was not fused into the iron, and a good deal of it was just hanging there loose. It was not a solid body. In putting the fork under the rim of the tub, it was necessary for him to exercise great care. If he bumped it during that operation, the chances were that he would shake the powder from the side of the tub down into the bottom; or in moving it from the table if he bumped it, he would have the same results, knock 3 the powder off, or a portion of it off. Then, in putting it in the furnace on the angle irons, if he got any kind of a bump, it would result in the powder sliding off the side of the tub down into the bottom. If he bumped the tub before it went into the furnace and he knew it, he would have to turn that tub onto its side and take an asbestos glove or rag and sweep that powder down, and then take a pair of bellows and blow out the powder so that it would be clean. That is the reason that we had to exercise so much care; it was on account of the casting being cold and the enamel not being thoroughly fused to the iron when it went into the 4 furnace.

Q. In other words, if I understand you, by the hand process, he could not get his enamel on smoothly or rapidly. The tub or article being enameled cooled? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. As a result of its cooling, when the enamel came in contact with the iron, or the enamel which was previously deposited, because of that cooling it did not fuse but merely hung there? A. Yes, sir.

Q. And because of that these precautions were necessary? 1
A. Yes, sir, and the accidents happened which you described? A. Yes, sir.

Q. On the introduction of the Arrott dredger, was it possible, and was it the experience that you could get the enamel on the tub faster, and that consequently it fused when it was deposited?

A. By the use of the Arrott dredge, as we use it today—

Q. (Interrupting): That is upon its introduction and since then?

A. Yes, it is possible for a man to distribute his powder, his enameling material, on there fast enough, go twice 2
around the tub and get enough on there so that when the tub is lifted up and the fork is put under there, the enameler just lifts up the fork and all that he has to look out for is so that he does not strike one of those tines on the end of the tub; he puts his fork under it and shoots it right into the furnace. It would be impossible to shake or bump any of the enamel off of the tub as we do it today.

Q. You said that the enamel, after being put on the tub, when you used the hand method, was porous. Would it be proper to describe it as an eggshell surface?

Mr. GROSVENOR: Objected to as leading. 3

A. That is what it was known as. It was described that way.

Q. That was the trade description or shop description?

A. That is the shop description, enameled with an eggshell finish, as we know it today.

BY Mr. GROSVENOR:

Q. Are you talking of the porous condition when it is put on, or after it is put on the tub?

A. The porous condition after the tub is finished. 4

Mr. GROSVENOR: Mr. Noble's question was directed to the condition of the powder in the sieve, if my recollection is correct. Will you read the question?

The question referred to was then read by the stenographer.

Q. What was the shop description of the finished enamel product when you used the hand method?

A. In speaking of the enamel we spoke of it as being porous, and as having an egg-shell finish; that was the common language used among the enamelers.

Q. Compare that finish which you have just described with the finish of the article which you got after the introduction of the Arrott patent.

A. The finish today is a hard, solid finish with a high lustrous finish to it.

Q. Is it porous? A. No, sir.

Q. Then does it or not collect as much dirt as it formerly did when it had the porous finish? A. No, sir.

Q. In other words, it is more sanitary?

A. What dirt it collects now is easily wiped off.

Q. And formerly—

A. It showed in those fine pores. Those pores were extremely fine, but they were there.

Q. Describe the tub or article which you are going to enamel in point in heat; what does it look like?

A. It is a bright, cherry red; a very bright, cherry red.

Q. Do you know approximately how many degrees Fahrenheit the tub is when it comes out of the furnace?

A. It is conceded among the enamelers that 1500 degrees is about the correct heat.

Q. Will you now describe the effect of the heat upon the enameler, upon the way in which he had to do his work when you used the hand process, first taking the short hand dredge and then the long hand dredge?

A. When we first used the short hand dredge—

By Mr. GROSVENOR:

Q. The short hand dredge was only used for the rim, wasn't it?

A. That was the first dredge ever used for the purpose of enameling bathtubs. The long handled dredge was an evolution of that.

Q. An evolution before the using of the Arrott patent?

A. Yes, sir; when the short hand dredge was used it was necessary for a man to hold in his mouth or by means of his teeth a mask, two asbestos gloves on his hands and his jacket, both arms and breast were covered with asbestos, and it was necessary for him to use a very heavy canvas apron because he had to get so close to the tub and stay there so long, because it was necessary to get the tub so hot

in the beginning that it would set fire to average clothes. 1
Q. And what effect did that have on the men?

Mr. GROSVENOR: I object to that because the witness has testified that the long handled dredge was a development from the short handled dredge. Were they both in use at the time of the invention of the Arrott patent?

Mr. NOBLE: Counsel for defendants has no objection to counsel for the government examining the witness at length on cross examination, but counsel will state that the short handled dredge will be shown to have been in use until the invention of the Arrott 2
dredge and was in use until recently in many shops. The long handled dredge was developed in the work of Dawes & Myler and was developed by Mr. Shield.

Mr. GROSVENOR: All right, then we will go on.

Mr. NOBLE: What was the question?

The last question was then read by the stenographer.

A. It was very exhausting work, and a great many men were not physically able to stand it. It was necessary in those times for a man, after he had enameled one tub, to go 3
outside and remove that extra clothing and sit down on a bench or a chair for some time until he could recuperate.

Q. Was that effect the same throughout the year, or was the effect which you have described greater during the summer?

A. The effect was considerably greater in the summer time. Part of the time we could not run our furnaces in the summer time, because the heat played them out.

Q. Now, let us pass to the long handled dredge and will you describe its evolution and the effect of it in respect to heat? 4

A. The long handled dredge was introduced for the purpose of removing the men from the extreme heat and to lighten, as far as it would be possible, the weight which a man would have to carry in holding a dredge full of powder, and it was conceded to be a very material improvement over the short handled dredge.

Q. Then, it had two improvements, one in that it enabled the men to stand further away from the hot iron which was being enameled— A. Yes, sir.

1 Q. And, second, it relieved some of the load, by the use of the counterweight, which he carried and which he had to guide over the ware which he was enameling? A. Yes, sir.

Q. What was the weight which an enameler had to carry with the short handled dredge, on the arm, as you have described it?

Mr. GROSVENOR: I object again, because it does not appear that the short handled dredge is the only dredge that can be used if one does not use the Arrott dredger. In other words, the fact that the dredge employed at the beginning of the art was unsatisfactory, as you
2 say, is no evidence that the Arrott dredger is the only dredge which one can use. That is evident by the fact that the short handled dredge does not have to be used because they used the long handled dredge after the short handled dredge.

Mr. NOBLE: Will you read the question.

The stenographer then read the last question.

A. From six to eight pounds.

Q. That is to say the powder which was put in the dredge weighed from six to eight pounds?

3 A. Yes, sir; to the best of my recollection. I never weighed it. I am surmising that, knowing about how much bulk there is to eight pounds of powder.

Q. And that is your best recollection? A. Yes, sir.

Q. What was the weight of the dredge itself without the powder in it, according to your best recollection?

A. About two pounds or two and a half.

Q. So that the enameler had to support in his one hand and guide over the article being enameled a weight of from eight and a half to ten and a half or eleven pounds, is that correct? A. From eight to ten pounds.

4 Q. Now, when in your factory you developed the long handled dredge, can you state approximately how much support was afforded to the enameler by the counterweight which you have described?

Mr. GROSVENOR: You are describing the long handled dredge as it was used at the time you abandoned it, or when?

THE WITNESS: At the time when it was in use?

Mr. GROSVENOR: By you.

THE WITNESS: By our work; yes, sir.

BY MR. NOBLE: 1

Q. Between what years did you use the short handled dredge in your work in the Dawes & Myler works, approximately?

A. As near as I can remember we used the short handled dredge from the beginning of that factory, which was in 1887, up until about '91 and '92, to the best of my knowledge.

Q. And then from '91 or '92 down to the time the Arrott dredge was introduced, you used the long handled dredge which you have described? A. Yes, sir.

Examination Suspended. 2

At this point, a recess was taken until 2 o'clock.

After Recess.

GEORGE SHIELD, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. NOBLE (continued):

Q. Now, Mr. Shield, will you describe the use of the long handled dredge, and the effect of the heat upon the workmen in its use? 3

A. The effect of the heat upon the enameler by the use of the long handled dredge was very materially reduced. He was not bothered a great deal with the heat by using the long handled dredge.

Q. Then, when the Arrott dredger was introduced, the same state of facts was true as to that dredger, as to the heat on the men? A. Very largely; yes, sir.

Q. By reason of the length of the handle—

A. (Interrupting): Yes, sir. 4

Q. Were the men exposed to the heat a shorter or longer time when they used the short handled dredge than when they used the Arrott dredge?

THE WITNESS: I don't quite understand you.

Q. Were the enamelers exposed to the heat of the article to be enameled for a longer or a shorter time when they used the short handled dredge than after the introduction of the Arrott dredger?

1 A. They were exposed to the heat a good deal longer.

Q. And, of course, with the long handled dredge they were exposed to the heat longer or shorter than with the Arrott dredge?

A. A longer time when using the long handled dredge than when using the Arrott dredge.

Q. What effect, if any, was had upon the weight of the castings, by reason of the fact that upon the introduction of the Arrott dredge the enameling powder could be put on faster, as you have testified?

A. The weight of our castings was reduced, as near as I
2 can remember, about from 30 to 50 pounds, although I am not positive as to just the exact weight but I know they were very materially reduced.

Q. Why was that possible?

A. Because you could get at them and dredge them quicker while the light casting still retained its heat. It is necessary to have a heavy casting—that is, after we got the Arrott dredger, we found that we could apply the enamel a good deal quicker, and consequently we could fuse it on the tub in less time, and it was not necessary to put so much iron in the castings.

3 Q. Will you tell me which dredge was the harder to learn the use of?

A. The short handled, handtapped dredge and the long handled dredge were both very much harder to learn to manipulate than the Arrott dredger.

Q. Could most any workman learn to use the hand dredge?

A. No, we found a great deal of trouble in breaking in men to use either one of the hand dredges; I do not think we learned half the men that started with the old hand dredge. They were either not physically able to handle it—

4 BY Mr. GROSVENOR:

Q. Are you speaking of the short handled dredge?

A. No, both dredges; in many cases the men were not able to stand up to it, and some men apparently never could get the knack of using one hand in one manner and another in another manner, and never could master it.

BY MR. NOBLE:

Q. So that you had difficulty in getting men who could learn to use the hand dredge?

A. We had a good deal of trouble, changing and trying men all the time; men were coming and going all the time.

Q. Describe some of the difficulties which they encountered?

A. Well, it took considerable knack. It took a bright man and a man who could adapt himself to that manner of work, and it took a strong man. I do not mean necessarily a large man physically, but a strong man. And it took a man with considerable stamina. Our difficulty was that a good many of them did not have the necessary staying qualities to stay long enough to learn it.

Q. Describe the effect upon the arms or wrists of using either the short handled or the long handled hand dredge?

A. Well, with the short handled dredge, the wrist would play out in here (indicating), because a man had to carry his hand in this manner, letting the dredge rest here (indicating).

Q. You are referring to the wrist of the arm in which the enameler held the dredge?

A. Yes, sir; carried the dredge.

MR. GROSVENOR: I think I must object to that question as to the short handled dredge, because the witness testified it was abandoned seven or eight years ago, before the introduction of the Arrott patent. It is immaterial and simply colors the testimony.

MR. NOBLE: Counsel for defendants replies that the short handled dredge was in general use throughout the manufacturing plants of the country when the Arrott dredger was introduced, and has been for some years since the Arrott dredger was introduced.

MR. GROSVENOR: But this witness has been testifying as to the manner in vogue at this particular factory.

BY MR. NOBLE:

Q. May I ask whether or not what you say applies to both the short handled and the long handled dredge?

A. It does.

Q. What was the effect you were describing upon the

wrist and hand and arm in which the enameler held the dredge?

A. Unless a man was extremely strong in the wrist in which he held his dredge, his wrist swelled up; several men I have known had to give up the enameling practice; we could not learn them; their wrists were not strong enough to carry the weight of the dredge with the powder in it.

Q. Did you or any men that you ever knew, complain of the effect on the wrists or of any other difficulties?

A. I don't know positively of any specific person, but I know that it was a general complaint among the men about their wrists or arms playing out.

Q. Take the other arm, the one with which you did the hammering?

A. There were times when even a seasoned man, a man who had been working at it for some time, would have to cease for a minute or two to rest his arm; his arm would play out, and it was a hard physical strain all the time that you were beating with the tapper.

Q. And in between the enameling of the tub, the man would have to stop and rest?

A. Yes, sir; and go outside to recuperate from the effects of the work.

Q. With which dredge, the hand dredge or the automatic dredger, could you put the enameling powder on more accurately? A. With the Arrott dredger.

Q. Please explain the reasons why that is true.

A. Well, your mind and all your energies are practically concentrated on that one operation. You have both hands to use the Arrott dredger with, to guide it, and your hands are just fixed on the handle of it and the hammer, you have just got your mind fixed on the one operation, whereas previous to that you had to watch your dredge so that it would not swing away from you, or hold it down, whichever it was, and then with the other hand you had to beat it. So you can put the enamel on better with the—

Q. (Interrupting): With the Arrott dredger.

A. Yes, sir; because the enamel comes through with a steady flow. With the other method it was intermittent. No matter how expert a man was, it was always intermittent.

Q. Now, with which dredge were you able to make the most money?

A. The enamelers today make more than twice as much money in the same length of time as they did with the old dredge. 1

Q. Is that due to the introduction of the Arrott dredger?

A. Very largely; very largely; it enables the enameler to do his work quicker, to do it with less effort to himself, to get away from the heat quicker, and with less liability of having the powder fall down while he is working; he can go on the jump now, using the Arrott dredger, whereas before he had to be so cautious not to bump his article, and that took up a great deal of time. I think the prices now are just about the same. 2

Q. Take a high-class tub: How many high class bathtubs could a man enamel in the old way by the hand process, upon a turn of the number of hours that they then used?

Mr. GROSVENOR: I object to the question, unless it is confined to the process used by the Standard Sanitary Manufacturing Company works. You mean to so confine it to the Dawes & Myler works?

Mr. NOBLE: Yes.

A. They then worked ten hours a day and twelve at night. With high grade tubs, they enameled from six to eight of what we call high grade tubs, in ten hours. 3

Q. Since the introduction of the Arrott dredger, how many high grade tubs do the enamelers turn out in the turns that have been in vogue, since the introduction of that Arrott dredger?

A. Part of the time we worked six hours and part of the time eight. In the six hour turn, they will make from ten to twelve high grade tubs.

Q. And in the eight hour turn?

A. In the eight hour turn they will make from twelve up to fourteen. 4

Q. That is class for class? A. That is high grade tubs.

Q. Of the same class that they made with the hand dredge? A. Yes, sir.

Q. Let us take what are called in the trade "competition tubs"; how many tubs did the enamelers make in a turn as then in vogue by the hand process?

A. We did not make that grade at that time, Mr. Noble, the guaranteed.

Q. Then, take the guaranteed tubs?

Q. Is that the only change that you recall, besides the change in the dredge?

A. Well, we made a change in the manner in which our enamelers get their powder.

Q. That is, from the powder boy to the dummy?

A. We used to have a powder boy who was supposed to be there with a scoupful of powder ready to dump it into the enameler's dredge; now we have the dummy.

Q. So then the change in wages to which you have testified is, in your opinion, due chiefly to what?

A. To the facility with which the men are able to produce the tubs and to the reduction in loss in the use of the Arrott dredger.

Q. You say the "reduction of loss"; what do you mean by that?

A. All bathtubs and sanitary enameled ware, after the enameler makes them, are loaded on a truck and taken to the packing room, and at the entrance to that room they are subjected to a rigid examination under an extremely strong light, for the purpose of showing any defects in the tubs, such as specks of dirt, rough surfaces or what is known in the trade as pin-holes; the color of the enamel, the smoothness of it, and the absence of pin-holes; if the inspector finds any of these, the tubs are either degraded to a lower grade, or they are sent out again to be chipped off.

Q. With which dredge was there the greater loss, the hand dredge or the Arrott dredger?

A. The loss since we have been using the Arrott dredger has been materially reduced from what it was at that time.

Q. From when?

A. From when we were using the hand dredge.

Q. Let me ask you another question: Is the inspection which you have made since the introduction of the Arrott dredger, in looking for defects in the enameled ware, as great as, or more severe, or more exacting, than it was hand dredge or the Arrott dredger?

A. The inspection of all cast iron sanitary enameled ware today—it is inspected more than 100 per cent. closer than it was. The trade has been educated up to the fact, and they demand perfection, as near as it is possible to get it in cast iron enameled goods. The inspection of bath-

tubs today is closer and more rigid by the trade than I have ever known it since I saw the first tub made. 1

Q. Then, if the inspection had been as strict and as exacting as it is today, when applied to the enameled ware which you made formerly by hand, would there have been any greater loss at that time than you have mentioned?

A. The loss certainly would have been greater with the inspection closer; that is, as it is today.

Q. In other words, under the inspection as they then had it, articles passed which, under the inspection as you have it today, would be rejected.

Mr. GROSVENOR: Objected to as leading. 2

A. That is right.

Q. I have corectly described your testimony in my question.

A. Yes, sir.

Q. I understood you to say some time ago that this air operated table, which is one of the changes which you mentioned in connection with the greater output of sanitary enameled ironware, that the use of that would not have been possible with the old hand dredge. That is correct, is it not? A. Yes, sir. 3

Q. How about the utilization of the furnace? By which method was the use of the furnace made the greater part of the time?

A. The furnace today, at the present time, is kept occupied practically all of the time.

Q. How about the days when they enameled by hand?

A. A man had to raise his door and let his furnace stand idle for the purpose of going outside to recuperate a little; he did not have a tub in there.

Q. Was the man ahead of the furnace, or the furnace ahead of the man? 4

Mr. GROSVENOR: Objected to as being immaterial, irrelevant and incompetent.

A. The furnace was generally ahead of the man.

Q. What is the situation today?

A. The man can keep up to the furnace today.

Q. So with the use of the Arrott dredger you get a more continuous use of the furnace; is that correct?

A. Get a more continuous use of the furnace; yes, sir.

1 Q. Will you give us your best recollection of the rejections or losses that were had, due to defective enameling at the time when they used the hand dredges? How many tubs would a man lose by reason of defective enameling upon inspection?

A. A man enameling at that time—

Mr. GROSVENOR: At which time?

THE WITNESS: At the time of the hand dredges.

Mr. GROSVENOR: The long or the short handled dredges?

THE WITNESS: Well, the long handled dredges—at
2 the time we used the long handled dredges, the enamelers' loss, to the best of my recollection would run from 8 to 10 per cent.; that would be the loss on bathtubs.

Q. For that same class of tubs today, or since the introduction and use of the Arrott dredger, what is the percentage of loss, as near as you can state it?

A. Our loss during the past year in our enameling department, was a trifle under 3 per cent., taking the year 1910.

3 Q. Can you attribute that to any particular cause, and if so, what?

A. I attribute our success to the men being able to apply their powder quickly, get the enamel on the tub and get it fused and get the tub in the furnace quick and get it out. It is an acknowledged fact, among all enamelers, that the quicker you can start at a piece after it comes out of a furnace, the quicker you can apply your enameling material and get it in again, the better work you can do and the less loss you will have.

Q. And that result is brought about by what?

4 A. By the use of the present pneumatic dredger.

Q. Now, with which dredge did the enameler use the greater amount of enameling powder?

A. I have no figures for that question, but I know just as a matter of general experience that we use less enamel today than we did at that time.

Q. Do you make any tubs now since the introduction of the Arrott dredger which are larger than the tubs which you made previous to that time? A. Yes, sir.

Q. How much do those tubs which you now make, the largest ones, weigh? What is the weight of the cast iron tubs? 1

A. I think what we designate as our 6 foot Luxor weighs very close to 400 pounds, 375, or somewhere along there; I don't remember the weights of our bathtubs particularly, because we have such an enormous line.

Q. Take the Luxor; you say that weighs close to 400 pounds? A. Yes, sir, to the best of my knowledge.

Q. What have you to say as to the ability of a man, by the hand dredge, to stand that heat and enamel such a tub?

A. We haven't got any men at the present time who would do it. 2

By Mr. Grosvenor:

Q. Have you asked any of them?

A. Yes, sir.

Mr. Grosvenor: I object to it—

By Mr. Noble:

Q. Why, what is the difficulty about it?

A. It is extremely large; it is over 6 feet in length; it has a five inch rim to it, and it is a big, heavy, massive tub, and it is hot—particularly hot when it comes out of the furnace, on account of there being so much iron in it, and the high quality which is demanded of a tub of that grade— 3

Q. Do you mean the high quality of enamel?

A. Yes, sir; I know a man could not make those tubs successfully with the hand dredge.

Q. Do your men make those tubs commonly with the Arrott dredger?

A. Yes, sir; the men that make the tubs make anything from a 4½ foot to a 6 foot tub that comes to them. 4

Q. Then it is a matter of regular routine? A. Yes, sir.

Q. When you said a man could not make one of those tubs with the hand dredge, did you include both the long and the short handled dredge?

A. A man could not make one of those tubs successfully with either the short or the long handled dredge.

Q. Mr. Shield, have you kept a record of the last two weeks in January, 1911, of the number of tubs enameled in the Dawes & Myler works?

1 A. That information is compiled for my benefit along with the manager, and it is compiled from the men's daily time sheets by the paymaster's department, and handed to me twice a month, sometimes monthly, at the time of each pay, or as soon after that as possible.

Q. And that is kept by the men in the ordinary course of their duties? A. Yes, sir.

Q. Can you state how many tubs were enameled during the period commencing January 16th and ending January 31, 1911?

A. No, I could not answer that question accurately.

2 Q. I will show you this paper and will ask you if you can do it?

A. (Referring to paper): Commencing January 16, up to and including January 31, we enameled 2,528 tubs.

Q. What was the per cent. of loss on those tubs, due to all causes?

A. The per cent. of loss was 1-1/10 per cent.

Q. I observe on this tabulation the names of six men, who apparently made no losses.

A. These six men had no losses during that period.

Q. These men were all enamelers?

3 A. Those men are all bathtub enamelers.

Q. This is a record relating only to bathtubs?

A. Yes, sir; that applies only to the bathtubs and to no other department.

Mr. NOBLE: Mr. Stenographer, mark that as Exhibit No. 23, for identification, offered by the defendants.

Paper referred to was then marked and filed as Exhibit No. 23 for identification, offered by the defendants.

BY MR. NOBLE:

4 Q. I omitted to ask you which dredge the men could more easily learn to handle?

A. The pneumatic, the Arrott dredger.

Q. Now, take one hundred men, so as to illustrate: What would be your estimate from your experience, as to the number of men you could get to use the hand method out of that one hundred, and the number you could get to use the automatic method, based upon your experience?

Mr. GROSVENOR: Does that mean one hundred men

working around the enameling factory, or one hundred apprentices, or what? 1

Mr. NOBLE: One hundred men that come and apply for a position—men who are anxious to learn.

A. We would not get 50 per cent, of them that would make enamelers.

Q. By which method? A. By the hand dredge.

Q. How many would you get of the same men, based upon your experience to use the automatic dredger?

Mr. GROSVENOR: I object to all this line of questioning. It is all imaginary and hypothetical. 2

A. I think we would get at least 80 per cent. of men whom we could learn to use the Arrott dredger.

Q. Now, please state what your experience is in picking out men for both methods?

A. My experience during the time I was foreman of the Dawes & Myler Works, while the old hand dredges were in use, is that I had a great deal of trouble to keep the furnaces manned. I was continually getting men, putting them on as helpers and working them up to the point where they were second dredgers, and when I come to put them inside—to make the tubs—either they had not the ability 3 to do it, or they had not the backbone to stand up to it, or they were physically unable to do it.

Q. How about the automatic dredge?

A. I have considerable trouble when I have a vacancy on a furnace, as to which helper I am going to give the position to. They all want the position. I do not have any trouble learning the men how to manage that. They seem to pick it up with very little trouble.

Q. In your experience with the automatic dredger, of the men who become enamelers, do they stick at their work or leave frequently? 4

A. Very frequently that we have the men leave.

Q. Very frequently or infrequently?

A. Very infrequently that we have a man leave. We very seldom have a man leave our works as an enameler. I only remember one case of a man leaving our employ in the last two years.

Q. What was your observation and experience during the period you used the hand dredge, with respect to the same matter?

1 Mr. GROSVENOR: You cannot refer indefinitely to the hand dredge, when the evidence shows that there were two kinds, and that they differ in workmanship and form?

Mr. NOBLE: Please state it as to both the short handled and the long handled hand dredges.

Mr. GROSVENOR: I still object.

A. We were continually losing men on account of the men's arms playing out, and the work being too hard for them.

Q. Does your answer apply to the short handled dredge
2 or to the long handled dredge? A. It applies to both.

Q. With which dredge, the automatic or the hand dredges, can you put on a thinner coat ef enamel on a tub and have it come up to standard?

A. With the automatic dredger.

Mr. NOBLE: That is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What position do you have?

A. I am general foreman of the enameling Department
3 of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company, at New Brighton.

Q. How long have you been with that Company?

A. Went with them in June, 1888, and worked with them continuously until May, 1902,—

Q. 1902?

A. Yes, and was away almost four years and then came back and worked from 1906 continuously.

Q. You were away from 1902 to 1906? A. Yes, sir.

Q. Were you a boy when you went there?

A. I was a young man less than 21.

4 Q. How did you start with them?

A. Coating, putting a base coat on these small Massilon kettles or cooking pots.

Q. You started in as an enameler of cooking pots?

A. No, sir, putting the base coat on; I started in at the bottom rung of the business.

Q. You started in at the bottom rung of the business?

A. Yes, sir.

Q. When you were enameling these cooking utensils,

the instrument was given you, and you applied the slush to it? A. Yes, sir. 1

Q. When did you start in on bath tubs or sinks?

A. I enameled kettles and pump cylinders for one year; I was a slusher for at least six months.

Q. A slusher of what?

A. Of kettles and pump cylinders.

Q. You did not make the slush, did you? A. No, sir.

Q. It was given to you and you applied it? A. Yes, sir.

Q. How long did you do that? A. For six months.

Q. Then what?

A. Then I went to enameling the kettles and pump cylinders. 2

Q. Still on the kettles? A. Yes, sir.

Q. And you had then the powder instead of the slush, to put on? A. Yes, sir.

Q. Did you make the powder? A. No, sir.

Q. You applied it just as it was given to you?

A. Yes, sir.

Q. When did you start in to enamel tubs and lavatories?

A. To the best of my knowledge, I worked there a year and a half when I started to enamel lavatories. 3

Q. That would be about what time; that is, just give it to us approximately. I know we cannot remember these dates exactly.

A. About 1890; that is approximately.

Q. Then your position was that of enameler; that is, of putting the powder on? A. Yes, sir.

Q. You did not make the powder? A. No, sir.

Q. You did not have any connection with any other part of the factory at this time? A. No, sir.

Q. Well, how long did you do that?

A. I made lavatories for about a year. 4

Q. Then what? A. I started on bath tubs.

Q. Were you made an enameler or a rim man?

A. They started me in as an enameler.

Q. Was that with the short-handled dredge?

A. Yes, sir.

Q. That was before the long-handled dredge had been made? A. Yes, sir.

Q. And how long did you do that?

A. I judge about three years.

Q. Three years?

A. I think so, as near as I can remember.

Q. You were not the foreman then? A. No, sir.

Q. Did you devise this long handled dredge?

A. Yes, sir.

Q. You haven't got one of those here?

A. No, sir; there is one laying around the factory yet.

Q. Can you bring that along to-morrow? A. I can.

Q. Will you do so? A. Yes, sir.

Q. Now, after using the short-handled dredge for three years, you started in on the long-handled dredge?

A. I was foreman at that time.

Q. Did you ever use the long-handled dredge?

A. I had to instruct the men in its use.

Q. Did you ever apply it yourself?

A. I applied it, but not steadily; not for any length of time. I have gone in and found a man not able to finish his work, and I have finished it for him.

Q. That was after you were the foreman? A. Yes, sir.

Q. Your duty, then, was to look after the other men who did the enameling? A. Yes, sir.

Q. Is that what you do to-day? A. Yes, sir.

Q. How many years have you been foreman?

A. I judge about 11 or 12 years.

Q. During the time that you have been foreman, have your duties been confined to the overseeing of these enamelers? A. Very largely.

Q. How large a plant have you at New Brighton? How many men have you?

Mr. NOBLE: How many enamelers, or how many employees?

Mr. GROSVENOR: No, how many employees have you?

A. I think we have between ten and twelve hundred men; that is, at the time when our factory is being run full.

Q. These men are divided into several different departments, aren't they? A. Yes, sir.

Q. What is the first department?

A. The first department is the pattern department; then the foundry department, then the cleaning department; then the enameling department, and then the packing or assembling department.

Q. Take the enameling department; does that include the making of the powder? A. No, sir. 1

Q. Or the making of the slush? A. No, sir.

Q. You have omitted that in your description of the departments?

A. Yes, sir; that is in the mill room or chemical department; that is where the material is melted or ground.

Q. And your duties do not take you into that department? A. No, sir.

Q. There are chemists out there who have charge of that?

A. They have a mixer who has charge of that. 2

Q. He is a chemist, is he not? A. No, I don't think so.

Q. Well, what is his name? A. V. A.—

Mr. NOBLE: I object to that.

THE WITNESS: Mr. McKinney.

Q. V. A. McKinney? A. No, sir; H. McKinney.

Q. Well, he is the mixer there? A. Yes, sir.

Q. Now, who is the superintendent?

A. John F. Whitehead.

Q. Who is the assistant superintendent?

A. We haven't any. 3

Q. Has Mr. Whitehead charge of all these different departments, the enameling and the mixing and all the others? A. No, sir.

Q. What has he charge of?

A. The mechanical end of the factory and the pattern department.

Q. Has he charge of the foundry department for making the molten iron? A. No, sir.

Q. Who has? A. Mr. Christian.

Q. What position has he? A. Foundry foreman.

Q. He has the making of the iron, which is melted or made and poured in through the molds to make the castings? 4

Mr. NOBLE: I object to this line of cross examination.

Mr. GROSVENOR: You called the witness to show that the use of this Arrott patent in his judgment, is essential in the making of the enameled ware. It is certainly proper for the Government to show what position the witness holds in that factory, and to

1 show what other processes are used, and their connection with the use of this dredger.

Mr. NOBLE: Well, I object to it.

Mr. GROSVENOR: Answer the question.

A. Yes, sir.

Q. Do you have anything to do with the making of the casting? A. No, sir.

Q. Do you have anything to do with the selection of the quality of the iron which goes into the making of the casting? A. No, sir.

Q. Do you have anything to do with the making of the
2 pattern; by that I mean the article or object upon which the sand—

A. (Interrupting): If there are any patterns or any castings made from a certain pattern, that comes to the enameling department, and on account of the shape of that pattern, it is not properly made, so that it will enamel successfully, then I raise objections to that and have it altered; that is as far as I go.

Q. That is when it comes to you?

A. Yes, sir;—when it comes to me.

Q. If it is chipped or knocked and the surface is not
3 properly polished, then you reject it? A. Yes, sir.

Q. But up until that moment, you have nothing to do with it; is that right?

A. Well, I have general supervision of our cleaning department too.

Q. The cleaning department is the department that takes the casting after it comes from the mold, is that right? A. Yes, sir.

Q. The rough casting is ground down by emery wheels?

A. Yes, sir; when necessary.

Q. And by sand blasts? A. Yes, sir.

4 Q. And files? A. Yes, sir.

Q. And small wheels? A. Yes, sir.

Q. And that is all under you? A. Yes, sir.

Q. That is all done after the iron has been made?

A. Yes, sir; after the mold has been made.

Q. After the casting has been made? A. Yes, sir.

Q. Do you have anything to do with the making of the casting? A. No, sir.

Q. Have you anything to do with the pig iron that goes into the casting? A. No, sir.

Q. In other words; the cupola is outside of your jurisdiction? A. Yes, sir. 1

Q. And everything which pertains thereto? A. Yes, sir.

Q. Now, taking up the slush and the enameling powder; those are different, aren't they? A. Yes, sir.

Q. Do you put on the slush in powder or liquid form?

A. Liquid.

Q. The powder, of course, is dry? A. Yes, sir.

Q. The slush is put on like calcimine or like paint?

A. In our factory it is poured on.

Q. How do you make it even; with the brush?

A. It runs even. 2

Q. What sort of an instrument do you use?

A. A dipper.

Q. Just throw it on? A. Pour it on.

Q. You have charge of the pouring? A. Yes, sir.

Q. That is, the man who does that is under you?

A. Yes, sir.

Q. This slush is brought to you? A. Yes, sir.

Q. Where is it made? A. In the mill room.

Q. Do you know what the components of the slush are?

A. No, sir.

Mr. NOBLE: I object to this question. Your witnesses objected to answering anything about the component parts, and I did not ask them those questions. 3

Mr. GROSVENOR: I have not asked him what they were. I have only asked him if he knew them, and he said no. This examination is simply to show what other processes are of importance in the making of bathtubs.

Q. Now, you said Mr. McKinney has charge of the making of the slush? A. Yes, sir.

Q. And he has charge of the making of the powder? 4

A. Yes, sir.

Q. Do you know what goes into the making of the powder?

Mr. NOBLE: Note the same objection.

A. No, sir.

Q. Do you know whether there are half a dozen or a dozen ingredients?

Mr. NOBLE: Same objection.

A. No, sir.

Q. Did you ever make a study of the subject?

THE WITNESS: I don't understand your question.

Q. Did you ever study the chemistry or the scientific part or the duties connected with the making of this enameling powder which is sifted on the tub?

A. No, only as it applied to the material when I was working on it.

Q. You always took it as it came to you, and if you did not think that it fused or melted properly, then you called the attention of Mr. McKinney? A. Yes, sir.

Q. That is, some times the powder would melt and fuse with the iron, and some times it would not? In other words, there are grades, aren't there, of powder?

A. There are grades only as to the color or density.

Q. What do you mean by that?

A. Well, I mean that you may get a powder and you may get a particular melt of powder that will be a little off color.

Q. That is, the tub will be brown when it is finished?

A. No, but it will not have a pure clear white finish, as it should have.

Q. And at such times you call his attention to the matter; is that right? A. Yes, sir.

Q. You do not know whether he changes the ingredients which go to make up the powder from time to time, do you?

A. I couldn't say.

Q. How about the slush; is that always of the same quality? A. There are variations in that too.

Q. Do you change the slush from time to time?

A. I don't know personally.

Q. Well, has its appearance been different from time to time?

A. Its appearance has been different once or twice.

Q. Would you call that to Mr. McKinney's attention, and tell him which was the better? A. Yes, sir.

Q. From your observation? A. Yes, sir.

Q. And he would give you the one that you preferred?

A. Yes, sir.

Q. Would the powders vary from time to time?

A. Not very much.

Q. But a little? A. Very little variation.

Q. Then you would tell him which kind you liked?

A. I would tell him if there was anything the matter with it. 1

Q. That is, in the fusing of it? A. In the working of it.

Q. Do you know whether any zinc is used in the making of the powder?

Mr. NOBLE: Objected to as immaterial and irrelevant and as violating the agreement of counsel as to the question of the manner of making these powders.

Mr. GROSVENOR: I don't want to go into the secrets of the business. Counsel apparently admits that this is one of the secrets of the business.

Mr. NOBLE: Counsel only stands upon the professional understanding which was had. 2

Mr. GROSVENOR: Yes, there are some things, of course, which cannot be disclosed.

Q. Is Mr. McKinney a chemist? A. No, sir.

Q. How long has he been with you?

A. The present head of the mill room has been with us about a year, I think.

Q. About a year; you call it the mill room where the powder and slush are made? A. Yes, sir.

Q. Where did he come from? 3

A. He came from New Brighton; a young man; I think he was up to the Porcela Works.

Q. Where is that? A. In New Brighton.

Q. What do they make there? A. Porcela.

Q. What is that?

A. A substance for cleaning bathtubs or any enameled ware.

Q. Who was his predecessor?

A. His brother, B. A. McKinney.

Q. Where is he now? A. Canada, I believe.

Q. Have you ever been in the mill room? A. Yes, sir. 4

Q. The furnaces are in the mill rooms, aren't they?

A. Yes, sir.

Q. The various ingredients after being mixed are poured into this furnace and melted, aren't they? A. Yes, sir.

Q. The slush is made the same way? A. Yes, sir.

Q. There are lots of articles or ingredients that make up this mixture that is poured into the furnace for the making of the powder, is that right? A. Yes, sir.

Q. And they are put in in different proportions?

A. Yes, sir.

Q. Now, go to the cupola, are you familiar with the construction of the cupola? A. Yes, sir.

Q. If it was out of repair, could you put it in commission again? A. No, sir.

Q. If the furnaces in the mill room, which are used for melting and making the powder, if they became out of order could you fix them?

A. I would know how to instruct the bricklayer to fix it.

Q. The furnace that is used in your mill room is an ordinary furnace, isn't it?

A. An ordinary furnace for that purpose; it is constructed for that purpose.

Q. Different from the furnace used for the heating of the iron tubs, is it not? A. Yes, sir.

Q. Now, going back to the cupola, do you know what is thrown into that? A. Yes, sir.

Q. Do you know the exact proportions?

A. I know the proportions that ought to be thrown in.

Q. Have you made any change in that in your business since it started? A. I don't know.

Q. You do not know whether there has been any changes made in the character of the pig iron thrown in, that is as to the chemical analyses of that iron? A. I couldn't say.

Q. Do you know whether those are matters which the chemists or scientific men give care to?

A. That is a matter which is regulated between the manager of our plant and the foundry foreman, based upon the result from the foundry and the enameling department.

Q. In other words, from time to time, the quality of the castings may vary, that is, some castings receive the powder better than other castings? A. No.

Q. What do you mean, then?

A. I mean that you are liable to get a mixture of iron in there that has not enough silicate; it is too hard and we have considerable breakage; that is called to the attention of the manager and to the foundry foreman.

Q. Breakage where? A. In the casting.

Q. And the components of the iron are some of the things that have to be regarded, is that right? A. Yes, sir.

Mr. NOBLE: Of course, all this testimony is taken subject to my objections as immaterial, irrelevant, incompetent and not proper cross examination.

BY MR. GROSVENOR: 1

Q. Who is this manager of your works?
A. Mr. W. C. McKinney.
Q. Is that the same McKinney you have mentioned?
A. No, sir.
Q. Is he ahead of the other McKinney?
A. Yes, sir; he is the manager of the Dawes & Myler Works of New Brighton.
Q. Who is the other McKinney, the head of the mill room? A. Yes, sir.
Q. He would be under the other McKinney? A. Yes, sir.
Q. Who is your direct superior? A. The manager. 2
Q. Are you paid a salary or by the day?
A. I am paid a salary.
Q. Who is the next man above the general manager, the Mr. McKinney the general manager?

MR. NOBLE: Objected to as irrelevant, immaterial and not proper cross examination.

A. Mr. Dawes.
Q. Mr. Dawes has general supervision of the manufacturing end of the business, of its different manufactures, is that right? 3

MR. NOBLE: Objected to on the same grounds.

Q. Respecting this table upon which the tub is placed after it is taken from the furnace, are there patents on that table?

MR. NOBLE: Objected to as being incompetent, irrelevant, immaterial and improper cross examination.

A. I couldn't say.
Q. You couldn't say?
A. I don't know whether the table is patented or not.
Q. Did you make the table? A. No, sir. 4
Q. Do you know whether you bought it?
A. We made it at our own factory.
Q. That is what I meant; now, how long has that table been in use?
A. Since 1900, I think, to the best of my recollection.
Q. Who devised it? A. Well—

MR. NOBLE: Note the same objections, please.

1 A. (Continuing): It was devised partly by one of our machinists, partly by the superintendent.

Q. Who? A. John F. Whitehead.

Q. This table, as I understand it, has a variety of wheels or levers or screws by which the tub can be turned lengthwish or sidewise?

A. It is turned sidewise by the use of a lever.

Q. The tub in the furnace rests in a natural position?

A. Yes, sir.

Q. It is taken out of the furnace and placed on this cradle again in a natural position? A. Yes, sir.

2 Q. Now, going to this furnace where the tub is placed, how many tubs can you put in a furnace? A. One.

Q. Is the furnace operated or made hot by gas or oil?

A. Gas in the summertime, oil in the wintertime if we have no gas.

BY MR. NOBLE:

Q. Is that natural gas? A. Yes, sir.

BY MR. GROSVENOR:

Q. Haven't there been changes in the construction of that
3 furnace from time to time in the last twelve years?

A. It is practically the same furnace.

Q. Now, when the tub is taken out of this furnace and this forked tool is placed under it, it is supported by a crane, that is the fork is suspended on a crane?

A. On the end of a crane.

Q. And that is swung over to the side? A. Yes, sir.

Q. To the right or the left of the furnace?

A. In some furnaces it is to the left and in some to the right; it depends on the position of the crane; the table is on the left generally.

4 Q. How many furnaces do you have in a room?

THE WITNESS: In a room?

Q. Are the furnaces in a straight building or do you have a few in one building and a few in another?

A. We have six bathtub furnaces in one room.

Q. Now, after the slush coat is applied, what is the color of the tub? It is wet when applied, is it not? A. Yes, sir.

Q. And what color is it? A. Grey, a kind of grey color.

Q. You let it dry then, don't you? A. Yes, sir.

Q. How long does it take this tub when you put it in to be heated? 1

A Well, that is a question that I could not very well answer you, because it depends on the position of the furnace and the kind of tub and no enameler can burn slush on a casting by time; it is a matter of judgment.

Q. There is a good deal of judgment in that?

A. Yes, sir; it is a matter of judgment.

Q. You have to watch it?

A. Yes, sir; he knows about how long it takes but he can not burn it by time.

Q. A furnace may be hot at some time and cool at some time? 2

A. Yes, sir; or there may be one hundred different things.

Q. Now, why is it so important to see that that tub is in there just the right amount of time? What will happen if it is in there too long?

A. The base coat will be destroyed; then if an enameler would put enamel on that there would be no cohesion between the enamel and the iron.

Q. Suppose you did not leave it long enough, then what would happen?

A. Then you would have trouble, you could not get a smooth tub; it would blow out in holes. 3

Q. When you apply the powder to the slush coat then there would be pin holes? A. Yes, sir.

Q. And that is true no matter what sort of a dredger you used, is it not? A. That is true under all circumstances.

Q. Now, you stated that you could not give the time exactly. Give it approximately. What are the limits, that is to say, in which a tub after it is put in, from then on, tell us approximately how long it takes to get that tub up to the right degree of temperature?

A. I cannot answer that question because I do not know. I never knew of anybody trying to time the burning of the slush or first coat; it depends on the condition of the furnace; if the furnace is hot it will not take as long as if it was cold; the man looks in there and sees if it is hot enough for that piece. 4

Q. It is very important to get it at the right temperature?

A. It must be at the right temperature; that is, if you get

1 it too hot, the tendency is to destroy it, but you have to bring it up to a certain heat.

Q. Is it five minutes or fifteen minutes; I want to get it just approximately?

A. Well, I would say that about eight minutes would be about the time for an ordinary tub, to the best of my knowledge, that is.

Q. It would not vary more than a few minutes one way or the other?

A. I would not think so, not unless you had an extremely cold furnace.

2 Q. This is, now, the first time you put it in? A. Yes, sir.

Q. Sometimes there may be something the matter with the furnace, is that right?

A. No, a man may come to work Monday morning and the man responsible for the furnaces may not have turned on enough gas in one of them to get it hot; that furnace would be cold all day.

Q. You take the tub out and sit it on the table; then, what is the first part of that tub on which you put enamel?

A. The top of the rim.

Q. With these Arrott dredgers—are the dredgers of dif-

3 ferent sizes?

THE WITNESS: For bathtubs?

Mr. GROSVENOR: Yes.

A. The rim dredge is considerably smaller.

Q. That is the small one and is held by hand? A. Yes.

Q. The large one is supported from the ceiling?

A. Yes, sir; it is supported by a crane or iron in some factories; it is in ours.

Q. Have you been in other standard factories?

A. Yes, sir.

4 Q. Do they follow the same principle there?

A. They do at the present time.

Q. How many handle this tub as a rule? A. Two.

Q. Don't you ever have three?

A. No, sir; never have three on bathtubs.

Q. And small ware you have one, don't you?

A. One and two.

Q. For lavatories how many do you have generally?

A. Generally have two.

Q. And on a sink? A. Two.

Q. What do you call the two men? 1

A. The enameler and the rim man.

Q. The enameler uses the heaviest dredge?

A. Uses the large dredge.

Q. The other man uses the rim dredge? A. Yes, sir.

Q. Who turns the wheel or the levers?

A. The enameler operates the table by means of a foot valve.

Q. That is the man who operates the large dredge?

A. Yes, sir.

Q. Do these two men start powdering the thing at the same time? A. Yes, sir. 2

Q. What part of the tub does the enameler do?

A. He dredges the part of the rim towards him and the inside of the tub.

Q. And the other man?

A. Dredges the outside of the tub as it comes down to him.

Q. The enameler does the body of the tub? A. Yes, sir.

Q. And the rim man the rim only on the outside?

A. Yes, sir.

Q. How long does it take to do that and put the tub back in the vault? 3

A. I don't know, just two or three minutes.

Q. Just two or three minutes?

A. Yes, sir; to the best of my knowledge; I don't know positively; I never timed it.

Q. During this time that the powder is coming on to this tub, the stream from the dredger sifts over the tub two or three times?

A. While the enamel is being put on the tub the table is let over and the enameler dredges the side.

Q. Who does that? A. The dredger or the enameler.

Q. That is the inside, now? 4

A. Yes, the outside is the rim man's work.

Q. The outside of the tubs is not enameled?

A. Very seldom; the enameler dredges one side of the tub and by pressing the foot valve he causes the table to turn, and by pressing it again he gets the other side.

Q. That is the off side? A. Yes, sir.

Q. In spreading the powder over one of these sides he passes this dredger over the sides, doesn't he?

A. Yes, sir; and when he gets the right amount—

Q. It is necessary to do that, is it not? A. Yes, sir.

Q. And that takes how long?

A. About two or three minutes.

Q. How long would it take with the long handled hand dredger?

A. Well, I think it would take five or six minutes, to the best of my belief.

Q. Have you ever timed it? A. No, sir.

Q. You are just saying that approximately?

A. Yes, sir; and from my experience.

Q. Was it ever timed out there?

A. Yes, sir; I think it was timed.

Q. Who timed it?

A. I think I have heard the enamelers talk about it being timed; I don't know if anybody ever did it or not.

Q. You were at the works when they installed the Arrott patent? A. Yes, sir.

Q. Didn't they have experiments then to see if the patents did it quicker and if so how much quicker?

A. No, sir; we tried it; we demonstrated it was quicker and better than the old method because we got a steady flow of enamel and we could handle the tub quicker.

Mr. GROSVENOR: Will you read that question?

The last question was then read by the stenographer.

Q. Now, you said that some of the enamelers made experiments? A. I have heard them say it.

Q. When was that?

A. I cannot remember whether it was before I left or since I came back.

Q. Were they making them out there?

THE WITNESS: Experiments?

Mr. GROSVENOR: Yes; where were they making them?

A. They were not making any experiments.

Q. I thought you said that some of the enamelers timed themselves?

A. I heard some of the enamelers say that they were timing themselves sometimes in connection with this Arrott dredger, but I never did it.

Q. Then, in speaking of the average length of time you were just basing it on your general observations; is that right?

A. On my general knowledge of how long it took us to make a tub with the old hand dredge and the length of time that it takes us to make a tub with the pneumatic dredger. 1

Q. You say it takes two or three minutes to go over the tub when it first comes up; you then put the tub in the furnace? A. Yes, sir.

Q. And how long do you leave it there then?

A. Until it gets to a certain color which indicates to the enameler that it is fused.

Q. Is that a matter of judgment too?

A. Yes, sir; it is simply a matter of conditions.

Q. Suppose you leave it in too long, what would happen? 2

A. You would destroy it.

Q. Suppose you did not leave it in long enough?

A. You would bring it out and see that you have a rough coat of enamel on and you would put it back in and get it to the point that you wanted it.

Q. And judgment is necessary for that? A. Yes, sir.

Q. You say you do not know how long you keep the tub in the furnace after it is put back after the first application of enamel; is that right?

A. I could not give the exact time.

Q. Give it approximately; you talked so definitely about the difference in time on your direct examination; now give it to us approximately? 3

Mr. NOBLE: The witness is giving apparently responsive answers and I suggest that the lecture by counsel for the Government is immaterial and irrelevant.

A. It is a hard matter to give time about matters that are always a question of judgment. I can answer directly as to how many tubs we can make in a certain time, but when it comes to a matter that for twenty-one years has been a matter of judgment, it is almost impossible to do that, and I would say something that is not true and I do not want to do that. 4

Q. In other words, one tub may be in there longer than the next tub? A. Yes, sir.

Q. When you first started to enamel were you able to tell how long to leave it in?

A. I started on kettles, and I absorbed that knowledge from that time until the time I started on bathtubs; then I

had judgment to tell when the tubs were hot enough and when the enamel was fused enough.

Q. That is one of the difficult things to learn, is it not?

A. Yes, sir.

Q. And that is something that must be learned just the same as the amount of powder that is to be put on the tub?

A. We have to learn that; it is part of the business.

Q. If you gave a man a dredger, he could not tell just what the color is going to be on the tub any more than he can how long it should stay in the furnace?

A. When we put him on the tub we put him on the rim and he acquires that knowledge while he is working there. Every time the tub goes in the furnace he, being on the fork with the enameler, he must see it; when the door is opened it is directly in front of him and he can observe the color every time that tub is taken out.

Q. How do you train an enameler? Do you tell him about the different things that he must observe? A. No, sir.

Q. He learns from what he gets from the first man?

A. He can tell from what he sees being done, and if he has any ambition to succeed he realizes that if he wants to advance, he realizes that it is up to him to make good.

Q. In all these things? A. Yes, sir.

Q. Now, we have the tub in the furnace after the first coat; you leave it in there a few minutes and then you take it out again and put on another coat? A. Yes, sir.

Q. The two men operating as before? A. Yes, sir.

Q. And they put on as much powder as the first time?

A. It all depends on how much they put on the first time; the man knows how much he put on there.

Q. By the amount that was in the sieve the first time?

A. By simply a matter of what is intuition with him; he knows how much he is getting on there, and if by any means he would get a little more on there than he intended to, then that would be in his mind and he would just skim over it very lightly. He knows those things from practice and observation.

Q. How many times is this process of putting the coats on repeated? A. Twice; sometimes three times.

By Mr. Christy:

Q. You mean repeated twice or just two coats?

A. Two coats.

BY MR. NOBLE:

Q. Talking about the Arrott dredger now, aren't you?

A. Yes, sir.

BY MR. GROSVENOR:

Q. By a coat you mean the number of times that it is taken out of the furnace? A. I mean applied to it.

Q. You do not mean the number of times the enameler goes over it when it is taken out?

A. No, sir; I mean that when a man starts out to enamel a tub after it comes out of the furnace until he puts it back; that is what we call in shop parlance a coat.

Q. Sometimes a dredge, is it not? A. Yes, sir.

Q. A coat may consist of going over the tub several times with the sieve or dredge, isn't that right?

A. It does, but very seldom more than twice.

Q. I mean when the tub is taken out of the furnace for a coat it is turned around on the table a number of times so that the powder goes all over it more than once? A. Twice.

Q. Twice?

A. Yes, sir; they generally—in fact, invariably—go twice around it and then put it back.

Q. Then they put it back? A. Yes, sir.

Q. Then they take it out and go over it twice again?

A. If they think they can get a good tub then that is all they do.

Q. After the second coat is applied, the tub is again put back in the furnace, is it not? A. Yes, sir.

Q. And then it is taken out and put aside?

A. Yes, sir; it is examined then to see that there are no imperfections in it and if there are we proceed to fix them.

Q. How long does the tub stay in the furnace this last time, after the application of the second coat?

A. Just long enough to fuse that enamel on; if there is more enamel on it takes a little longer to fuse.

Q. But the differences are only a minute or two?

A. Yes, sir.

Q. And putting on the second coat of enamel it only takes a minute or two? A. Yes, sir; generally.

Q. How long did it take with the large hand dredge?

A. It took about twice as long.

Q. How long would that be?

1 A. That would be between four and five minutes, or between three and four minutes.

Q. Did you ever time them? A. No, sir.

Examination Suspended.

At this point the hearing was adjourned until 10:30 o'clock the following morning at the same place.

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2 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

3 Post Office Building, Pittsburg, Pa.,

February 15, 1911.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

4 Pursuant to adjournment the taking of testimony for the Defendants was resumed in the Post Office Building, in Pittsburg, Pa., on the fifteenth day of February, 1911, at 10:30 o'clock A. M.

GEORGE SHIELD, a witness heretofore produced and sworn on behalf of Defendants, resumed the stand for a continuation of cross examination and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Shield, at my request Counsel for the Defendants

have brought into Court three different dredges, one of the same being a long handled dredge which you said during cross examination yesterday you would have here to-day? 1

A. Yes, sir.

Q. I now show you the shortest of the three dredges and ask you what it is (indicating)?

A. That is the short-handled hand dredge as used in the Standard works at Allegheny prior to the introduction of the pneumatic dredger, but not similar, only in a general way, to the short-handled dredge as used at the Dawes & Myler Works prior to the introduction of the pneumatic dredger.

Q. Yesterday you testified that there was a certain short-handled dredge in use until about '91 or '92; is that right? 2

A. 1891.

Q. Then, in the Dawes & Myler Works you first planned and devised a long-handled dredge; is this dredge which I now show you similar to the short-handled dredge, which was in use in the Dawes & Myler Works in the beginning of the industry until about 1891?

A. The general outline of it is, but the construction is different.

Q. In what way?

A. The Dawes & Myler dredge, the handle was just about the same length, maybe a trifle shorter; the manner of attaching here (indicating) was the same. 3

Q. You mean the manner of attaching the wooden handle to the sieve was the same?

A. Yes, sir; practically; now, the way this bottom is attached here (indicating) differs materially; at the Dawes & Myler Works we just had a band around here.

Q. You are talking now about the differences in the sieve?

A. The difference in attaching or holding the sieve to the bottom of the dredge.

Q. In respect to the length of the handle this is similar? 4

A. Very much similar; yes, sir; but that is a little longer than the one that we use.

Q. This tapper is in general shape similar to the form you used? A. Yes, sir.

Q. Now, I understand that this style of dredge was given up at the Dawes & Myler factories about '91, is that right?

A. No, it was given up before that time.

Q. It was given up when you adopted the long-handled dredge? A. Yes, sir.

Q. Which was about what time?

A. Well, I cannot remember the date, Mr. Grosvenor.

Q. Just approximately, of course?

A. I think probably four or five years before the introduction of the Arrott dredger.

Q. When was the Arrott dredger introduced?

A. About 1901.

Q. By Dawes & Myler? A. Yes, sir.

Q. Then you gave it up four or five years before you got the Arrott dredger? A. Yes, sir.

Q. And in those four or five years did you use this long-handled dredge (indicating)?

A. Yes, sir; between the time we gave up the short-handled dredge and the introduction of the Arrott dredger that was the dredge we used at the Dawes & Myler Works.

Mr. GROSVENOR: I offer this dredge in evidence as Petitioner's Exhibit No. 278.

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 278."

Q. I now direct your attention to the long-handled dredge; the handle of the long-handled dredge is about three feet longer, is it not? A. Yes, sir; seven feet long.

Q. The sieve is about one foot in diameter, is it not?

A. About 10 inches.

Q. It is two or three inches more than the diameter of the sieve of the other?

A. We used to use a nine inch bowl on the short-handled dredge.

Q. Other than the difference in the length of the handle and the diameter of the sieve, the chief difference lies in the fact that the long-handled dredge has an iron band around the handle about a foot and a half from the sieve with a hole in which a chain may be inserted?

A. A hook on the end of the chain.

Q. That is the point where the hook on the chain from the crane was attached? A. Yes, sir.

Q. That was to help support the dredge while the workmen guided it over the bathtub? A. Yes, sir.

Q. Before you adopted this long-handled dredge and while you were using the short-handled dredge was there any support from above to assist the workmen? A. No, sir.

Q. Then, in addition to the fact that the old dredge is

three feet shorter, it appears that the workmen had to bear the entire weight of the powder and the dredge in his one hand? A. Yes, sir. 1

Q. That was done by supporting the handle of the dredger under the elbow of the left hand and by holding it close to the body?

A. Yes, sir; he generally supported it right there (indicating) letting it hang there (indicating).

Q. This dredge was abandoned by the Dawes & Myler Works about four years before you got the Arrott patent?

A. Yes, sir; approximately.

Q. There was a period of duration between the time you got the Arrott patent and the time you gave this up? 2

A. Yes, sir.

Q. Wasn't there a smaller dredge for the rim man?

A. Yes, sir; a smaller arrangement for the rim man.

A. And you have a smaller dredger of the Arrott type used on the rims today? A. Yes, sir.

Q. This short-handled dredge was used, though, for the main body of the tub? A. Yes, sir.

Q. In these questions which we are discussing today, then, we are dealing with dredges which were used only on the main body of the tub? A. Yes, sir.

3

Mr. GROSVENOR: I now offer this long-handled dredge in evidence as Petitioner's Exhibit No. 279.

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 279."

Mr. GROSVENOR: This Exhibit No. 279 has attached to it a tapper similar in shape to the tapper which accompanies No. 278, but the handle of the long-handled dredger is of seamless tube, whereas the handle of the older dredge is of wood.

Q. Now, I show you the third dredger; is this a copy or one of the Arrott dredgers which are being used today? 4

A. Yes, sir.

Q. In your works at New Brighton?

A. Yes, sir; practically.

Q. And is this the type which has been used generally since 1899? A. Since 1901.

Q. Since 1901 at the Dawes & Myler Works? A. Yes, sir.

Q. That has also a band around the handle for the attachment of the hook to the chain upon which the dredge is suspended, is that right? A. Yes, sir.

1 Q. That band is approximately three inches nearer the sieve than the band which supports the long-handled dredge, is that right? A. Yes, sir.

Q. Will you weigh this Arrott dredger in your hand and then take this earliest form of dredge, known as Petitioner's Exhibit No. 278, and tell me which is the heavier?

A. The old long-handled dredge is considerably lighter.

Q. The Arrott dredger is considerably heavier, wouldn't you say? A. Yes, sir.

Q. The handle of the Arrott dredger is of iron? A. Steel.

Q. Solid? A. No, sir; hollow.

2 Q. And the end of the handle particularly is heavy, is it not? A. Yes, sir.

Q. Now, in length the handle of the Arrott dredger is practically ten inches longer than the handle of the old dredge known as Exhibit No. 278? A. Yes, sir.

Q. Is it not the fact that the reason that the Arrott dredger can be used several times heavier than the older form of the dredge—is not the reason the fact that you have the Arrott dredger suspended by a chain which bears the larger part of the weight of that dredger, the chain being attached by a hook about ten inches from the sieve?

3 A. Yes, sir.

Q. Now, comparing the two early hand-dredges the short and the long, is not the chief advantage of the long-handled dredge the fact that that dredge was to be abandoned or suspended on a chain, thus relieving the workman of the weight, in a large measure? A. No, sir.

Q. I am speaking now of the two hand dredges?

A. Yes, sir.

Q. What is the chief advantage?

A. Removing the man away from the extreme heat, it is suspended then, because it would be impossible for a man

4 to hold that dredge so far away from the weight, and it is suspended in that way.

Q. The chief advantage in comparing the two old dredges is that the workman with the long dredge is able to stand further away from the tub? A. Yes, sir.

Q. You testified yesterday that you were not an enameler at the time this long-handled dredge was used; am I correct?

A. Yes, sir; I was foreman at that time.

Q. Will you show me how this (indicating) was held?

A. The man stood about here (indicating) and he supported that in the same manner. 1

Q. I place beside you parallel with the dredge known as Exhibit No. 279, the Arrott dredger and point out to you the facts that with the long-handled dredge you are standing further from the sieve than the length of the handle in the Arrott dredger; is that right? A. Yes, sir.

Mr. GROSVENOR: I now offer this Arrott dredger as Petitioner's Exhibit No. 280.

Dredger referred to was then marked and filed as "Petitioner's Exhibit No. 280."

2

Q. In other words, you are now standing further from the sieve than you could stand in holding the Arrott dredger; is that right? A. Yes, sir.

Q. Compare the weight of this Arrott dredger to the weight of the dredge known as Exhibit 279; which is the heavier of those?

A. The Arrott dredger is the heavier of the two.

Q. The comparative weight of the dredges, the long-handle dredge and the Arrott dredger, is not of great importance for the reason that both of them is suspended from above so that a few pounds of weight difference is not very material? A. In the actual weight of them. 3

Q. Because they are suspended, is that right?

A. Yes, sir.

Q. Will you look again at the Arrott dredger which is known as Exhibit No. 280: there is a small button on the underside of the handle; is that the point from which the workman governs the tapper?

A. That starts the hammer or stops it.

Q. And the end of the tube is hollow; do you attach there the pipe which connects with the compressed air?

A. Yes, sir. 4

Q. So behind the workman, as he holds the dredger, which is done in the same way, is it not? A. No, sir.

Q. Well, then, take the Arrott dredger and show how that is handled? A. In this way (indicating).

Q. Now, take the long-handled dredge and show how that is held? A. This way (demonstrating).

Q. You have testified that you are left-handed; therefore you hold the tapper on the long-handled instrument in your left hand? A. Yes, sir.

1 Q. If you were right-handed you would hold that in your right hand? A. Yes, sir.

Q. When you press this button on the Arrott dredger that starts the tapping at once? A. Yes.

Q. The second that you touch the button the tapping begins? A. The instant that is closed the tapping begins.

Q. Then you keep it closed? A. Yes, sir.

Q. And while it is closed the powder comes out?

A. The powder would be vibrated through the sieve.

Q. Does the powder cease coming out the instant that you let the button come out again? A. Yes, sir.

2 Q. Respecting the amount of powder, the two sieves hold practically the same amount? A. Almost.

Q. The practice is not to fill the sieve with the powder, is it?

A. Fill it within about an inch and a half from the top.

Q. When did you start to make the Luxor tub, do you remember? A. No, I do not.

Q. You were testifying yesterday in answer to Mr. Noble's questions that after the Arrott patent was invented you were able to construct or enamel heavier tubs; is that right? Do you recall that testimony?

3 A. To the best of my knowledge my testimony was that we had increased and made larger tubs since the Arrott dredger was introduced.

Q. And the tub which you instanced as an example was your Luxor tub?

A. Yes, sir; the six foot Luxor was an instance of that.

Q. And that was after you had installed the Arrott patent? A. Yes, sir.

Q. You testified yesterday that you had asked workmen to do that enameling on this heavy tub by the hand method; is that right?

4 THE WITNESS: On the Luxor tub?

MR. GROSVENOR: Yes.

THE WITNESS: By the hand method?

MR. GROSVENOR: Yes.

A. I do not recollect that.

Q. Let me read this testimony to you (reading):

"Q. What have you to say as to the ability of a man, by the hand dredge, to stand that heat and enamel such a tub?

"A. We haven't got any men at the present time who would do it. 1

BY MR. GROSVENOR:

"Q. Have you asked any of them?
"A. Yes, sir."

Do you recall that testimony? A. Yes, sir.

Q. That must have been after the adoption of the Arrott in your plant, because you testified that this tub was not made until after you got the Arrott patent in your place, is that right? A. Yes, sir.

Q. Then you asked men to use this hand dredge on tubs after you had gotten the Arrott patent into your plant, is that right? 2

A. No, sir; I have asked them if they would use the long-handled dredge provided we did not have the Arrott dredger.

Q. Why did you ask them that?

A. Just simply a matter which came up; it came up about two years ago probably and the question has been discussed quite recently in the shop.

Q. How recently? A. Within the last month.

Q. Whether you would?

A. Whether they would or could. 3

Q. Who asked them? A. Me.

Q. Did anyone ask you to ask them that? A. No, sir.

Q. Then why did you?

A. Because we had been discussing this matter of the Arrott dredger and the benefits of it in a general way in the shop.

Q. During the last two or three months? A. Yes, sir.

Q. Two years ago how did you happen to ask them if they would?

A. There was some suit between my employers and the J. L. Mott people, I believe, for some infringement on patent rights; I am not positive about that. 4

Q. Did you testify in that suit?

A. I made depositions to the use of the long-handled dredge.

Q. That is this long-handled dredge (indicating)?

A. Yes, sir.

Q. Which is known as Petitioner's Exhibit No. 279?

A. Yes, if that is the number, it is the long-handled dredge.

1 Q. This one (indicating)? A. Yes, sir.

Q. You made deposition as to the benefits of the use of the long-handled dredge, is that it?

A. The difference between the use of the long-handled dredge and the air dredge.

Q. When did you discontinue the use of the long-handled dredge in your work at the Dawes & Myler Works? A. 1901.

Q. Have you used the long-handled dredge on any of the work there since then?

THE WITNESS: No, sir—do you mean steady or what?

2 Mr. GROSVENOR: No, off and on?

A. I think I used the long-handled dredge to try and make a few tubs.

Q. When did you do that?

A. I think in the early part of 1910; in 1910—in the early part.

Q. Why did you happen to do that?

THE WITNESS: Why did I happen to do it?

Mr. GROSVENOR: Why did you happen to start to do it?

3 A. I wanted to do it because there was some discussion between the manager and myself about the advisability, whether it was possible to use the long-handled dredge on our present table.

Q. What did you do, did you take the dredger out?

A. Just unhooked this dredger (indicating) and put this long-handled one in its place.

Q. Who tapped it?

A. One of the enamelers, and he played out and I tried it.

Q. Did he ever use it before? A. Yes, sir.

4 Q. Was he an enameler prior to 1901? A. Yes, sir.

Q. Then he used the long-handled dredge then, did he?

A. Yes, sir.

Q. During these seven years then, he had had no occasion to use the long-handled dredge, is that right?

A. That is correct.

Q. What is that man's name? A. Cruickshanks.

Q. Did he also testify in that other case? A. No, sir.

Q. Has he been here today or yesterday? A. No, sir.

Q. Has Mr. McKinney been here today or yesterday?

A. Not to my knowledge. 1

Q. Is that the only time you have brought out any long-handled dredge since 1901?

THE WITNESS: Is that the only time I have used it or it has been used in the factory?

Mr. GROSVENOR: Yes.

A. Yes.

Q. It is the only time you ever tried to do it? A. Yes, sir.

Q. Have you used the long-handled dredge on any of the articles? A. No, sir.

Q. Don't you use the long-handled dredge on any part of 2 the rims, on the under part of the tops—

A. No, sir; the only thing we use the small hand dredge—we have them laying around the shop so that if a man gets a hole or anything in the bottom of his tub it is used so that a man can tap a little powder around that spot.

Q. In other words, it is used to cure imperfections which may occur during the enameling process from time to time?

A. It is used to put on powder just in a small spot.

Q. You mean pin holes? A. Well, for the pin holes, yes.

Q. You have a small Arrott dredger, too? A. Yes, sir.

Q. Why don't you use that for the pin holes? 3

A. Because it is attached in close proximity to the back of the table; whenever a tub is finished it is brought over to the other side of the room under an arc light so that the examiner will have enough light to see it by and with the rim dredger it would take a hose probably twenty or twenty-five feet long to carry it to that one place, and therefore we keep those others there; so, if it is necessary to put a little powder on we can do that. The rim dredger is attached to a pipe at the back of the table where the rim man stands, and it is only about eight to ten feet long, it is only long enough to allow him a little swing. 4

Q. That is, the hose? A. Yes, sir.

Q. And the rim dredger is smaller than any of these three? A. Yes, six inches in diameter.

Q. And the length of the handle is about what?

A. About five foot.

Q. All this rim work is done by the small Arrott dredger? A. Yes, sir.

Q. And this larger dredger is used on the body of the tub? A. Yes, sir.

1 Q. That is on the inside? A. Yes, sir.

Q. Because these tubs are not as a general rule enameled on the outside? A. That is right.

Q. You have to have a small hand dredger then near each furnace, don't you, so that when the tub is brought out for final examination under this arc light you may have to put on some powder on a little spot? A. Yes, sir.

Q. And for that reason you have them laying around?

A. The enameler has them conveniently at hand.

Q. In other words pin holes still trouble the enameler?

A. Not so much pin holes as casting holes.

2 Q. What are casting holes?

A. Casting holes are small holes in the casting that the enameler does not discover until he puts the tub in the furnace.

Q. After the casting is smoothed over by these emery wheels and the sand blast it is sent over for your inspection before it goes over to the enameling department; those imperfections then are small imperfections which escape the inspection when the tubs are enameled and then they are seen? A. Yes, sir.

Q. They are discovered under this light?

3 A. Well, we take what is called a patcher.

Q. What is a patcher?

A. That is a piece of steel three or three and a half feet long, sharpened at one point with the other end shaped in a spoon shape; he takes the sharp end of that patcher and puts it in the hole to see if that hole is just as large all the way through. It might be possible that there is a blow hole in there; that is that it is larger under the surface of the iron than it is on the surface.

Q. That is a blow hole in the iron? A. Yes, sir.

Q. And then what does he do?

4 A. He opens that out until the hole is as large at the exit as it is at any other place, and then puts some enamel powder in there.

Q. With the dredger?

A. With the patcher, and then to smooth that over he puts just a pat of powder on it and runs it back in the furnace to fuse that little bit of enamel.

Q. And that hole is due to the fact that the powder does not fuse properly? A. In some cases.

Q. What are the other cases?

A. The slush coat may be just a little too heavy at some point; it might be that the enamel is applied too heavy, or it might be that there was not enough enamel on it in the first place. If that were the case, if there was not enough enamel in the first coat or first dredge, he would not have one but he would have a lot of them. 1

Q. If the slush is not put on properly it causes them too, does it not? A. Sometimes.

Q. Now, I suppose in your experience you find that in some days or months there are more pin holes than others?

A. The percentage is never equal.

Q. It varies from time to time? A. Yes, sir. 2

Q. The causes may be different? A. Very different.

Q. You sometimes get a batch of powder which seems is not as satisfactory as other powder, is that right?

A. Yes, sir.

Q. And some days in your judgment and the judgment of those with whom you confer, the iron is not satisfactory?

A. Yes, sir.

Q. And sometimes if results are not satisfying you consider whether the trouble is with the iron or the powder, is that right?

A. We have to find out where the trouble is. 3

Q. But you do not go to the enameler and tell him that he has put on too much enamel, but you look into these other causes, the making of the enamel and the iron and so forth?

A. If one man in the department is having trouble all the time, and the others not, then we know it is he.

Q. And if the others are having trouble, then you know that there is something wrong with the iron or powder?

A. Looking around and finding out what is the trouble.

Q. You do that sometimes, don't you?

A. There are times when we have to do it. 4

Q. You started with the Dawes and Myler Works in 1888? A. Yes, sir.

Q. When did they open their factory?

A. Sometime about the late fall or about the holidays in 1887.

Q. When you went with them were they making bathtubs? A. No, sir.

Q. You were familiar with the making of bathtubs?

A. Yes, sir.

1 Q. There has been a gradual development and perfection in the making of bathtubs since 1889? A. Yes, sir.

Q. And there have been changes in the powder?

A. Yes, sir; there have been some changes in the powder since 1888.

Q. You did not make the powder as you testified yesterday, so that the changes would not always be brought to your attention, would they? A. No, sir.

Q. For instance, if the chemist thought that there aught to be more or less tin he would not necessarily tell you?

A. Not necessarily.

2 Q. That is a matter that he is always considering, that is, not always the tin, but the proportions of the ingredients?

A. Only so far as they cause trouble in the enameling of the goods that we make.

Q. And when they do cause trouble he looks into that matter? A. Yes, sir.

Q. You are not in charge of the mill room, but you know enough about the mill room to know that this process is the process followed in making glass?

A. I am not familiar with the process in making

3 glass.

Q. So you do not know whether the process is similar?

A. No, sir.

Q. You do not know whether changes have been made in which the enameling powder has been made, that is I am referring to the hours the powder had been in the melt?

A. The general process of making powder to-day has been followed for a good many years.

Q. Do you know the number of hours the powder is in the melt? A. Yes, sir.

4 Mr. CHRISTY: I object to that question. It infringes on the understanding which is said to exist respecting the manufacture and the ingredients.

Mr. GROSVENOR: Counsel states that he does not know of such an understanding.

Mr. HEATH: Do you mean to say that it was not an understanding that we would not go into the details of the business?

Mr. GROSVENOR: If there was an understanding it will be in the record, but I deny that there was

such an understanding. I recall at one time one of the witnesses for the Government on cross examination by Mr. Noble was asked some questions respecting the secrets of his business and I suggested to Mr. Noble that he discontinue along that line, or I would find it necessary to examine his witnesses along the same line, and he desisted. 1

Q. You have been making bathtubs since what time, that is sanitary enameled ware?

THE WITNESS: You refer to what is designated sanitary enameled ware at the present time?
Mr. GROSVENOR: Yes; I mean bathtubs, sinks and lavatories? 2

A. To the best of my knowledge we commenced that about 1890; I am not sure.

Q. Were you familiar at that time with the number of hours enameling powder was in the melt?

THE WITNESS: In the melt?
Mr. GROSVENOR: Yes.

A. No, sir.

Q. You were then just an enameler? A. Yes, sir. 3

Q. At what time did you become familiar with the number of hours? A. I couldn't answer that question.

Q. Do you know whether or not there have been any changes in the number of hours since you have been acquainted with it? A. To the best of my knowledge, no.

Q. Do you know all the ingredients that go into the making of your powder?

THE WITNESS: All the ingredients that go into the powder at our enamelling factory?
Mr. GROSVENOR: Yes. 4

A. No, sir.

Q. Do you know what changes, if any, have been made in the ingredients while you have been there?

A. No, sir.

Q. What would you call these dredges, Mr. Shield, a tool?

Mr. CHRISTY: I note an objection.

A. I consider this (indicating) and the short-handled

1 dredge a tool; the Arrott dredger I would consider an instrument.

Q. Used in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. It is not part of the sanitary enameled iron ware?

A. No, sir; it is used for the purpose of placing the enamel on the cast iron.

Q. Yesterday you testified that when a man used this short dredge he had to use an asbestos face cloth?

A. No, sir; a mask.

Q. And an asbestos shirt or apron?

2 A. A coat lined on the outside with asbestos.

Q. And a leather apron? A. A heavy canvas apron?

Q. And gloves? A. Yes, sir; asbestos gloves.

Q. Were those things used when you were using this long dredge known as Petitioner's Exhibit No. 279?

A. No, sir.

Q. All those articles for protection, then, were abandoned? A. Except the gloves.

Q. Before the Arrott patent was adopted? A. Yes, sir.

Q. Do you use gloves with the Arrott patent?

A. Yes, sir.

3 Q. On which hand? A. On one hand.

Q. For which hand? A. The right hand for me and left hand for any other man.

Q. Then, as regards the protection of the workmen, there has been no change respecting the apparel since you adopted the Arrott patent?

A. Since we abandoned this (indicating) and adopted this.

Q. That is since you abandoned Exhibit No. 279, which is the long-handled dredge and adopted No. 280, the Arrott patent?

4 A. The enameller uses a canvas sleeve on the arm that is exposed to the tub.

Q. He uses that with the Arrott dredger? A. Yes, sir.

Q. And that was used with the long-handled dredge?

A. Yes, sir.

Q. That is to say you have an additional protection with the Arrott dredger that was not required or was not used when the long-handled dredge was used? A. Yes, sir.

Q. In other words, all that description which you gave yesterday of these various articles they had all been aban-

doned with the abandonment of the short-handled dredge? 1

A. Yes, sir; they have not been used with the long-handled dredge.

Q. Now, long before the adoption of the Arrott patent you had in your factory relieved the workmen of a large part of the weight by this method of suspending the dredge on a chain to the crane above?

A. We had relieved him of a part of the weight; yes, sir.

Q. He is not relieved of the entire weight today?

A. No, sir; not the entire weight.

Q. Has there been any change in the method of suspend- 2
ing the dredge since you adopted the Arrott dredger?

A. No, sir.

Q. Then, in comparing the long-handled dredge which is Exhibit No. 279, and the Arrott dredger which is Exhibit No. 280, so far as the support of the weight goes, the same proportion is held up by this chain as was held before?

A. Yes, sir.

Q. Now, I will read this to you: "The heat was such as to compel the use of an asbestos glove, aprons and face screens"; that would not be a true description of the method in vogue at your factory at the time you adopted the Arrott 3
patent would it? A. No, sir.

Q. Now, I read you this description of the old method: "In the operation of the application of enamel in the powder form, the dredge or sifter has always been carried by the operator in one hand." If the word "carried" means the entire weight or support of the dredge, that is not an accurate account; that is referring, of course, to your factory and to the methods in vogue there prior to 1899?

A. That was true when we used the short-handled dredge.

Q. But, it was not true after you adopted the long- 4
handled dredge? A. No, sir; not in full.

Q. In other words that word "carried" should be "guided?" A. Yes, sir; to some extent.

Q. Well, he guided it, didn't he? A. Yes, sir.

Q. And he does that with the Arrott dredger?

A. Yes, sir; with this one (indicating) he uses two hands and with this one only one.

Q. Yesterday you testified in answer to this question of Mr. Noble (reading): "He had to support and guide with

1 one hand? A. Yes, sir." Taking up the two methods, the oldest method before you had the support, the entire weight was supported by the one hand, is that right? A. Yes, sir.

Q. After you had the long-handled dredge, the main weight was supported by this chain, isn't that right?

A. Yes, sir.

Q. You said yesterday: "You take a piece of enameled ware and you just get the minimum amount of powder on the cast iron, and you can take a hammer and hammer that, and you just simply have to wear the enamel off, comparatively speaking, that is, you just have to hammer
2 it off." What do you mean by that? I never heard of anyone hammering bathtubs. Do you mean that is just a possible experiment?

A. When a bathtub is rejected as not being fit to go out to the trade, it is part of my duty to hammer that enamel off to discover if the enamel is being applied in a manner in which it should not be done or if the enameler is doing something he ought not to do.

Q. You do that today? A. Yes, sir.

Q. You have to do that since you have the Arrott patent? A. We always do it.

3 Q. You might explain right here what the different causes are, leading to the rejection of tubs? You mentioned pin holes which might not be covered properly and you also mentioned defects in the casting. What other causes are there, just enumerate them?

Mr. CHRISTY: Is not that going into the business secrets?

Mr. GROSVENOR: That is for you to say. I thought the only essential in the business was the Arrott patent.

Mr. CHRISTY: Defendants' counsel objects to the
4 question as immaterial, and if followed up in all the details possibly involving unnecessary inquiry into matters which have come to the knowledge of the witness through long business experience and which his employer, having spent money to find out, wishes to preserve a secret. The witness is instructed by counsel that as regards structural matters such as those mentioned by examining counsel, he may answer the question but that he need not disclose until

otherwise instructed by the court any more remote causes not generally known in the trade. 1

Mr. GROSVENOR: Now, read the question.

The last question was then read by the stenographer.

A. The finished article being rough—

Q. Are you referring to defects in the enamel now?

A. Yes, sir.

Q. Do you mean wavy? A. Yes, sir; rough.

Q. What caused that?

A. There might be a good many things.

Q. Name some of them. 2

A. The casting might not have been properly smoothed off all over. There may have been some part of the castings not properly smoothed off.

Q. That is before it went to the enamelling room?

A. Yes, sir.

Q. What else?

A. Dirt might fall on the casting and the enameler trying to cover that dirt up.

Q. Fall off where?

A. Fall while the enamel is still in a semi-liquid condition and the enameler might try to cover that up and not get a thoroughly smooth article; that would cause its rejection. He might have small particles of dirt on the casting. 3

Q. Where would that come from?

A. From any place, from the furnace or from the air in the room.

Q. What else?

A. I think that is about all the causes of rejection that I would know of at the present time unless we had a broken casting.

Q. And you testified yesterday that you had charge of the polishing room, is that right? 4

A. General supervision of the cleaning room.

Q. Do you inspect each tub or do you have an assistant of yours inspect each tub before it goes to the enameling room? A. We have an inspector.

Q. And does he reject the tubs before they go over sometimes? A. Yes, sir; that is his business.

Q. Are more tubs rejected at that point or at the final point, when the finished tub is being inspected?

1 A. There are more tubs rejected at that point.

Q. Give us some of the objections that could be raised at that point, that is before the tub goes over to the enameling room?

A. The casting might not be properly made, properly moulded.

Q. What would cause that defect, the improper shape of the mould?

A. I am not expert in foundry matters to enlighten you on that.

Q. It might be in the iron?

2 A. If the casting is not properly made and it is impossible to remedy those defects it is discounted on the moulder, the man who moulds it.

Q. You mean he is paid by the piece? A. Yes, sir.

Q. Are all tubs rejected at this point discounted against him? A. No, sir.

Q. Which are not?

A. Those which we can fix up in the cleaning room, but the others are discounted unless they are broken in the cleaning and at some place in the cleaning room.

Q. What are the defects found at this point of the in-

3 spection of the tub?

A. The man who is supposed to file that tub and clean up, he may have left something undone. He may have left some place not filed which should have been filed, or he may have left something unchipped that ought to have been chipped.

Q. Is there any earlier inspection than this?

A. No, sir; only by the men who get the tubs to dress them; if they, in getting a tub, would see a hole that could not be stopped up, he would naturally set it off to one side. That is the only inspection they get.

4 Q. Do you have special men to make the moulds?

A. Iron moulders; yes, sir.

Q. They are the same men who put the iron in the moulds? A. Yes, sir.

Q. And the same ones who take it out? A. Yes, sir.

Q. They do not have anything to do with the making of the iron? A. No, sir.

Q. You testified yesterday that you have charge of the pattern room too? A. No, sir.

Q. That is outside of your jurisdiction? A. Yes, sir.

Q. Who does have charge of that? A. Mr. Whitehead. 1

Q. Do you have charge of the moulding room?

A. No, sir.

Q. Is that in Mr. Whitehead's department?

A. That is in charge of the foundry foreman, Mr. Christian.

Q. Is it not fact that moulds are made in different ways; don't you sometimes use one pattern and sometimes another?

THE WITNESS: In moulding the tubs?

Mr. GROSVENOR: Yes.

A. No, sir; but there are sometimes two and sometimes 2
one made at the same time.

Q. Perhaps I do not make my question clear: Supposing you are a moulder and you want to make a mould for a casting, what is the first thing you do?

A. The first thing the man has to do is to get his pattern, but I am not a moulder.

Q. What is the next thing?

A. The next thing is to get a flask.

Q. How many flasks does he have to get?

A. That depends on the amount of work he has to do.

Q. Do you know that on some tubs you use two patterns 3
and on some tubs one?

A. Only one pattern for a tub but it may be duplicated.

Q. That is the same thing?

A. For instance, a man is going to make a five foot bathtub with a certain name; there may be several patterns for the same thing.

Q. Can you describe the making of the mould? You lay a lot of sand on one side and pound it down, don't you?

A. You throw sand into the mould and pound it down, yes, sir.

Q. On the pattern? A. Yes, sir. 4

Q. Then you take the other side of the pattern and do the same thing? A. Yes, sir.

Q. In any of those cases do you use two patterns for that purpose?

THE WITNESS: At the same time.

Mr. GROSVENOR: I see you do not understand this part of the business.

THE WITNESS: No, sir.

1 Q. Your experience in the enamelling business has been confined to your factory, has it not? A. Yes, sir.

Q. During the four years that you were away were you in the enameling business?

A. No, sir; only for about six months.

Q. Where were you?

A. I was in Cincinnati for a man out there.

Q. Have you been over any other factories?

A. I have been in the Standard Works' factory.

Q. There?

A. At Allegheny; I have been in the Ahrens and Ott
2 Works in Louisville, Kentucky.

Q. They are now part of the Standard? A. Yes, sir.

Q. Have your visits been since they were a part of the Standard? A. Yes, sir.

Q. Both to Allegheny and Louisville? A. Yes, sir.

Q. Were you to any others?

A. The Colwell Lead Company of Elizabeth, New Jersey.

Q. When did you go over their factory?

A. About December one year ago.

Q. When, and what other factory did you go over?

A. The Day-Ward Manufacturing Company's enameling
3 department.

Q. Where was that? A. Warren, Ohio.

Q. When did you go over that plant?

A. About six years ago.

Q. What sort of a dredge were they using at that time?

A. A long-handled dredge supported like this.

Q. Like which?

A. Like this one, Petitioner's Exhibit No. 279 (indicating), the only difference being that they had some sort of apparatus for getting out here (indicating) and the man working his arm here (indicating).

4 Q. That is instead of this tapper they had a sort of mechanical adjustment there (indicating)? A. Yes, sir.

Q. Have you been over any other factories?

A. No, not in late years.

Q. As I recall, the Ahrens and Ott plant and the Allegheny plant went into the Standard Manufacturing Company about 1899; do you know whether or not that is so.

A. Or 1900.

Q. Do you know whether those factories were using this long-handled dredge about that time?

A. The Standard was not; it was using the Arrott. 1

Q. Just previous to the adoption of the Arrott dredge, were they using the long-handled dredge?

A. No, sir; I don't think they were.

Q. They were still using the short-handled dredge?

A. Yes, sir.

Q. Take the Ahrens and Ott Works, had you been there and seen them using the dredger?

A. If my memory serves me right they were using the Arrott dredger at the time I was out there; I am not positive about that, though.

Q. Yesterday you testified that since the adoption of 2
the Arrott dredger you did not have to keep the tubs so hot; do you recall that testimony? A. Yes, sir.

Q. How much difference is there in the temperature; have you any idea?

A. No, sir; not to state to anyone; I know it when I see it in the furnace.

Q. That is, you can tell by color; is that right?

A. Yes, sir.

Q. Then, you would instruct the next man by color; that is, you would instruct the apprentice by telling him to look at the color?

A. The apprentice would absorb that information him- 3
self while working with the enameler.

Q. Under the old system, that is before the adoption of the Arrott dredger, how many times did you use to put your tub in the furnace; yesterday you testified that you now give them two coats?

A. The tubs we now give two coats under the old system we had to give four coats.

Q. That is with the short-handled dredge? A. Yes, sir.

Q. You testified yesterday that you give them all two coats? A. No.

Q. Well, what was your testimony? 4

A. We have different grades of tubs; our high grade tubs have three coats of enamel on them; our guaranteed baths have three coats of enamel on.

Q. And which have two?

A. The Competition or two year guaranteed baths have two coats on.

Q. The five years generally has three, is that right?

A. Yes, sir.

1 then he will not have the powder sticking—in other words, in this business of enameling is not the character and the quality of the enameling powder the most important consideration? A. Yes, sir; it is.

Q. You cannot take any powder, can you, and put it into that sieve and expect it to be all right and do for enameling purposes?

A. No, sir; it has got to be all right.

Q. Exactly right? A. Yes, sir.

Q. That powder which you use is the result of years of study and attention to that matter alone? A. Yes, sir.

2 Q. By trained chemists, some of them are, aren't they?

A. No, I don't think so.

Q. I don't mean necessarily a college man, but is not the man who makes it—is it not necessary for him to understand the components that go into the powder? A. Yes, sir.

Q. And it is necessary for him to understand the components of the powder and the grounding of the powder to the proper fineness? A. Yes, sir.

Q. On page 1133 of the testimony you said: "After his tub came out with one dredge on, it was evident that there were blue places in it, and then it was necessary for him to 3 put as much powder as he could on those blue places and touch as little as possible on the places where it was white. He knew that it was heavy because it was white, and he knew that it was somewheres thin, because there it was blue." The tub is red, is it not, when it comes out?

A. Yes, sir.

Q. Doesn't the powder become yellowish? A. Yes, sir.

Q. When it is thin you mean—

A. (Interrupting): When it is thin the iron or base coat shows through that skim of yellow enamel on there; it is very evident to one who works at it.

4 Q. And doesn't the enameler, the first thing, look into it?

A. Yes, sir; it is turned over to him and he looks it over.

Q. He looks at it today too, doesn't he?

A. He looks at it for anything so that it can be fixed up at that stage; any defects could be fixed up then better than after the tub is finished.

Q. What kind of defects could there be?

A. There could be some dirt in there or there could be a casting hole.

Q. Are there many holes found in those castings?

A. In making a casting there are always possibilities of those holes forming; the hole might extend under the pocket for five or six inches, but the outlet might only be as large as the head of a pin; when you get an air pocket or blow hole in there you have a place about as large as an ordinary green pea, but the outlet from that may not be larger than the head of a pin. 1

Q. Well, what is done about that? A. He opens that up.

Q. With a file? A. With the patcher.

Q. The same patcher that you referred to previously?

A. Yes, sir.

Q. During the time that you have been with the Dawes & Myler Works there have been improvements made in the method of handling the tub, that is of putting it in the furnace and taking it out, and the character of the furnace used? A. Yes, sir. 2

Q. And all this helped in economizing in time and labor?

A. To a certain extent; yes, sir; we would not have them in force if it had not been for some such reason as that.

Q. These improvements have all contributed to the advantage of the workmen? A. To a certain extent.

Q. The Arrott patent is not the only reason why he can bring a greater amount and a better product out of the furnace, then? A. Not entirely. 3

Q. Before the Arrott patent was installed and while you were using this long-handled dredge, you had a table to turn the bathtub around while it was being enameled, didn't you? A. Yes, sir.

Q. As I understand, the only difference in the table that you now use is that there is a foot valve attachment so that the enameler can now turn the table, saving the services of one man?

A. That is particularly the difference; the table would have to be reconstructed to work it in that manner— 4

Q. Well, you don't know whether the table is patented?

A. I do not.

Q. The third man who used to turn the table was simply the apprentice? A. I don't know—

Q. He was the low-priced man of the three?

A. Yes, sir.

Q. Have there been any changes while you have been in the factory in the putting on of the slush coat?

A. No, no practical changes; there may have been a

slight alteration in the way certain men handled the tubs but to all intents and purposes it is put on in the same manner at our factory always.

Q. It is poured on? A. Yes, sir.

Q. Then, what becomes of it, don't you save it?

A. No, sir.

Q. It is expensive, is it not? A. I could not answer that.

Q. Do you know what the enameling powder costs, that is the powder? A. No, I cannot answer that.

Q. That is outside of your range? A. Yes, sir.

Q. But you do know that some enamel powder costs a little and some a lot?

A. I know that some costs more than others.

Q. You use a different grade of enamel for the different grade of tubs? A. Yes, sir.

Q. You use a higher grade of enamel for the better tubs?

A. Yes, sir; I think so.

Q. How about the slush? A. Use the same slush for all.

Q. You spoke of the great amount of care necessary in putting the tub in the furnace with the old method; you cannot follow the careless method now, can you?

A. No, you can go at it rapidly and you have no danger of knocking the powder down.

Q. Well, the crane is just the same? A. Yes, sir.

Q. And the prong is just the same? A. Yes, sir.

Q. You just swing it out and around as fast as it can be done? A. Yes, sir.

Q. Of course, bumping the sides of the furnace—

A. Oh, that would spoil the tub.

Q. Under the old style or the new method? A. Yes, sir.

Q. Under the old style or the new method either one?

A. Yes, sir.

Q. Could you give us the idea of the number of tubs or the difference in the number of tubs that are lost owing to the jarring of the tub as it is put in the furnace?

A. It is a thing that we never have now; how many we did lose at that time or how much trouble we had, I could not tell you with any accuracy; I know we were troubled with it all the time and had to be extremely careful.

Q. When they were extremely careful were a great many lost? A. No.

Q. And you generally had been extremely careful?

A. Yes, sir.

Q. The only gain today is that the men do not have to be so careful, is that it? 1

A. The men do not have to take up so much time.

Q. I don't understand what you mean by the porous enamel; do you refer to the condition of the enamel after it has been fused and the tub is finished?

A. Yes, sir; it has a porous appearance.

Q. The term "egg-shell finish," is that a term used in the trade today? A. Yes, sir.

Q. You do not mean us to infer that there are no more tubs made with an eggshell finish, but that the occurrence is not as frequent? 2

A. It is very seldom that you ever see it.

Q. Explain what you mean by being porous?

A. Well, if you take an egg shell or the skin of human being, and when you put a magnifying glass on it, you can see hundreds of little pores on it, just barely visible to the naked eye.

Q. And the enamel is that way when it has an egg-shell finish? A. No, sir; then it is porous.

Q. Is not that the egg-shell finish?

A. No, sir; the egg-shell finish means that it is not the pure white color. 3

Q. Then you don't mean the two terms to be synonymous?

A. No, sir.

Q. What causes that porous condition?

A. I presume it is due to the composition of the powder.

Q. That is the powder was not mixed just properly; now, when the tubs have been porous the attention of the man in the mill room is called? A. We never have any now.

Q. Never did? A. Yes, sir; but not now.

Q. They are not that way now?

A. No, sir; but they were all that way.

Q. All that you sold? 4

A. Yes, sir; all more or less porous at that time from the very nature of it, from the nature of its composition it was porous.

Q. That is the composition of the powder? A. Yes, sir.

Q. Has the composition of the powder been changed?

A. Yes, sir.

Q. Since then?

A. Yes, sir; the powder today, the enamel today is solid; you can flake a piece off and it is solid clean through.

Q. You do not know what ingredients have been placed in the powder to give it that new quality? A. No, sir.

Q. But you do know that there has been a change in the composition? A. Yes, sir.

Q. Now, take the term "egg-shell finish" and describe that?

A. Ido not know whether I can make myself plain or not; to the ordinary average layman it is a defect which is not noticeable; the jobber and the manufacturer and the trade are the people who notice that condition. A man not familiar with the business might see a hundred of those tubs and not know what is the matter with them.

Examination Suspended.

At this point a recess was taken until two o'clock.

After Recess.

GEORGE SHIELD, resumed the stand for continuation of cross examination and testified as follows:

CROSS EXAMINATION BY MR. GROSVENOR (continued):

Q. Describe the appearance of the egg-shell finish?

A. The egg-shell finish, as near as I can describe, is apparently a modified mottled color; that is, there seems to be two shades; they are both white; either one of those colors would look all right by itself, but when you get the two of them combined in what is known as the egg-shell finish there is a noticeable difference to the ordinary enameler or jobber.

Q. That is very apparent? A. Yes, sir; it is.

Q. That is a different appearance from the porous finish which you have described?

A. Yes, sir; a porous finish lacks the lustre or the gloss; the egg-shell finish may have the gloss, but there is a difference in the color; just like a piece of mottled castile soap, but not so pronounced; it cannot be so pronounced or the ordinary man would notice it.

Q. When you find in your tubs this egg-shell appearance, can you, as in the case of the porous finish, go to the man in charge of the making of the powder and bring it to his attention?

A. We did when we had it; we haven't had that now for a long time. When we had it the last time, I could not say. 1

Q. When you had it the last time did you bring it to the attention of the man making the powder? A. Yes, sir.

Q. Did you do away with that powder?

A. No, sir; we used that powder on an inferior grade of tubs, on the lowest grade we make, the Nemo.

Q. Was the next batch changed?

A. I don't know; I couldn't say.

Q. That would be outside of your line? A. Yes, sir.

Q. What is a crazed finish?

A. There is no crazed finish; there is what is known as a craze. 2

Q. What is that?

A. That is a fine crack on the face of the enamel.

Q. And what causes that?

A. Well, there are a good many things that might contribute to that. If your casting was extremely heavy at one point and light at another the unequal contraction of that casting when cooling would cause that craze.

Q. In other words, it is necessary to have the casting of an equal thickness?

A. Yes, sir; very near; it is not possible to get a casting of an equal thickness all over, but if the difference is too pronounced that causes a contraction and that causes the craze; you might get a craze from your enamel not being right insofar as it was soft. 3

Q. That is the ingredients of the powder—

A. Would make it too soft; yes, sir.

Q. That might cause a craze, is that right?

A. Yes, sir; it might; a drop of perspiration from a man's arm or his face before that piece of ware gets cooled would cause it to craze. A drop of water of any sort or it being subjected to a strong draft of air before the casting is cooled enough might make a craze. 4

Q. It is necessary then for the casting to be of the same thickness so that it will contract in the same way and expand in the same way all over, is that it?

A. As near as it is possible to get that.

Q. What do you do when you find this craze? Do you call it to the attention of the man who makes the iron?

A. It all depends in my judgment what it is caused from.

If it is caused from the pattern not being in the proper shape, something being wrong with the pattern, I call that to the attention of the management. If it is caused from being subject to too much wind, because the piece was in a position where the wind got on to it, I would call the man's attention to it who was responsible for that.

Q. That is the enameler?

A. Yes, sir; sometimes it is necessary when you find your ware crazing to give the matter very careful attention to discover it.

Q. When you find the ware crazing, you say?

A. Yes, sir; that is it.

Q. It is then necessary to do what?

A. To give the matter close attention until you find the cause of the trouble.

Q. Is it more frequent to have the ware craze than it is to have the egg-shell appearance or porous appearance?

A. Yes, sir; we never have the egg-shell appearance now.

Q. But the crazing you do have?

A. Yes, sir; it does occur, but very rarely.

Q. Suppose you think it is due to the enamel being too soft, then what do you do?

A. I report the matter to the management.

Q. The powder man—that is the mill man? A. Yes, sir.

Q. It is necessary for the powder to expand and contract evenly with the casting which expands and contracts?

A. Yes, sir.

Q. And by saying that the powder may be too soft you mean that the composition of the powder may be such as not to enable it to expand and contract to an equal degree with the casting; is that right?

A. I can answer you this way: The softer enamel gets beyond a certain point, in making the enamel softer the greater the tendency toward crazing; the harder the enamel is made, the greater the tendency is toward chipping; no doubt in your travels you have seen enameled iron ware with a piece chipped off around it.

Q. What causes that?

A. That might be caused by a good many things, but the tendency, the nature of the enamel is to make it more susceptible to either chipping or crazing. The more you harden it, the more danger there is of chipping. The more you

soften it beyond a certain point the more danger there is 1
of making it craze.

Q. Is it not a fact that in the making of this ware the most important factor and the branch of the business that requires the most consideration and accuracy is the making of the powder?

A. Not necessarily; while the making of the powder demands close attention and accuracy the treating of it in applying it to the ware and the different methods and manners of handling it while enameling it is just as essential. The man might have a first class enamel powder; give it to some man who has not the ability to handle it properly dur- 2
ing the process of enameling and he will spoil it. A good first class enameler will make more and better ware out of inferior powder or inferior enamel powder than the incompetent careless man will make out of the best grade of enamel powder you can give him.

Q. You testified that the short-handled dredge was abandoned long before you got the Arrott patent? A. Yes, sir.

Q. That is at the Dawes & Myler Works? A. Yes, sir.

Q. Now, comparing the long-handled and the short-handled dredge, didn't the long-handled dredge relieve the workmen to a great degree of the intensity of the heat? 3

A. Yes, sir.

Q. You testified that as soon as the long-handled dredge was adopted the workman was able to do away with all those protections which you testified he used or wore when he used the short-handled dredge?

A. Outside of one glove and the light apron.

Q. One glove and the light apron? A. Yes, sir.

Q. Those protections he still maintains even with the Arrott dredger?

THE WITNESS: The one glove and the light apron? 4
MR. GROSVENOR: Yes.

A. Yes, sir.

Q. And he also has a protection on one arm?

A. On one arm; yes, sir.

Q. Do you know what weights are used in the castings of the other manufacturers of sanitary enameled iron ware?

A. No, sir.

Q. You are not able to say whether their weights are equal to yours or less than yours or more than yours?

1 A. No, sir; not able to say anything in regard to that matter.

Q. Now, when you used the long-handled dredge, were your turns, that is the hours of work that the laborers were employed, the same as today?

A. No, sir; eventually we did get down to work in three eight hour turns.

Q. On the long-handled dredge?

A. Yes, sir; at present we are working our men on six hour turns.

Q. Then, under the long-handled dredge the hours of
2 labor were longer than they are under the Arrott dredgers?

A. Yes, sir; just at the present time I will state that that is on account of business being slack last fall; to keep our organization together we doubled them up and put them on six hour turns so that we could take care of and give each man an average amount of work.

Q. Before that you had what? A. Eight hours.

Q. With the Arrott dredger? A. Yes, sir.

Q. And when you changed from the long-handled to the Arrott dredger you did not change the hours of work?

A. No, sir; only as the business demanded it; we tried to
3 take care of our men and not lay them off.

Q. Counsel for Defendants, Mr. Noble, said yesterday: "Counsel for Defendants replies that the short-handled dredge was in general use throughout the manufacturing plants of the country when the Arrott dredge was introduced, and has been for some years since the Arrott dredge was introduced." You have given no testimony on that point?

A. No, sir; only you asked me this morning as to how many factories I had been in during recent years and what kind of dredges they used.

4 Q. Just repeat those, now, what ones have you been in and tell about that? A. The Colwell Lead Company.

Q. That was one year ago? A. Yes, sir; in December.

Q. They were using the long-handled dredge?

A. Yes, sir; with a different arrangement of tappers.

Q. But it was supported by a wire? A. Yes, sir.

Q. And the other was the Day-Ward? A. Yes, sir.

Q. When was that? A. Five or six years ago.

Q. And they were using—

A. The long-handled dredge.

Q. That was supported also by the hook and crane? 1

A. Yes, sir; it would be impossible for a man to hold this (indicating Exhibit No. 279) without a support to it.

Q. What other plants have you been in?

A. None outside of the Standard Manufacturing Company's plant, that I can remember, the A. & O. Works in Louisville, and the works in Allegheny.

Q. What were they using when you went over the works at Allegheny? A. The Arrott dredger.

Q. And at Louisville?

A. To the best of my recollection they were using the Arrott dredger. 2

Q. When was that?

A. That was some time shortly after 1901; I could not exactly give you the year, but it was after 1901; either it was in 1901 or 1902, to the best of my recollection.

Q. Are you able to give any more testimony than you gave yesterday as to the comparative periods it took to enamel under the long-handled dredge and the Arrott patent?

A. No, sir.

Q. With the short and the long-handled dredges it took less time?

A. The long-handled—we did not use it for a good many 3 years and I do not remember now.

Q. But when you did away with the short-handled dredge it was considered a decided improvement?

A. Yes, sir; it was a decided improvement.

Q. And the effect was seen in the character of the ware which you produced? A. To a certain extent; yes, sir.

Q. You testified yesterday that respecting the number of tubs produced from the furnaces in an eight hour turn, was it? A. Yes, in ten hour turns.

Q. In ten and twelve hour turns? A. Yes, sir.

Q. Now, why did you select ten hour turns? Don't you 4 use an eight hour turn now?

A. At the time the short-handled dredge was in use and for a considerable length of time after the long-handled dredge was in use, we worked ten and twelve hours; it was only in the later years after the adoption of this long-handled dredge that the turns were reduced to eight hours?

Q. You have never had a ten hour and a twelve hour turn, then, under the Arrott patent, have you? A. No, sir.

1 Q. How can you calculate, then, the number of tubs made in a ten hour period under the Arrott patent?

A. By figuring what they make on an eight hour turn and allowing that they would not make that many, that they would not keep up that average if they were compelled to work more than eight hours; it is necessary sometimes, if a man does not show up, it is necessary to get someone to fill his place. The natural tendency is to secure the man who preceded that man, who is off, to work on the balance of that turn if he can possibly do so, because he is familiar with the furnace and is used to working on it.

2 Q. Suppose we base it on the turns as they are today; the usual turn is eight hours with you? A. Yes, sir.

Q. On an eight hour turn how many high grade tubs can you make?

A. We will make from ten to twelve high grade tubs in an eight hour turn.

Q. In twenty-four hours, then, you would make how many?

THE WITNESS: The same man?

Mr. GROSVENOR: No, three men.

3 A. Well, from thirty to thirty-six; those things vary, Mr. Grosvenor, from day to day.

Q. I suppose all these figures which you gave yesterday were only approximate?

A. They are based on the general work of the men; it is an approximate average.

Q. Taking now the other tubs, that is the guaranteed tubs, how many of those can you make in an eight hour turn?

THE WITNESS: Do we make?

Mr. GROSVENOR: Yes; average, that is.

4 A. About sixteen.

Q. How many in twenty-four hours?

A. From forty-eight to fifty.

Q. And the Competition tub, how many would you make?

THE WITNESS: At present?

Mr. GROSVENOR: Yes.

A. We make anywhere from sixteen to twenty.

Q. Taking these three classes of tubs, the high grade tub

that you testified probably goes through the furnace three times— A. Yes, sir; always. 1

Q. And the guaranteed tub goes how many times?

A. Three times.

Q. Also three times? A. Yes, sir.

Q. And the Competition tub? A. Twice.

Q. Are you familiar with the number of tubs produced in other factories in a six or eight hour turn? A. No, sir.

Q. You couldn't say that that production was anything exceptional?

A. That production is good, as far as I am able to gather from reports, compared with the plants of the factories belonging to our Company; you average or get fifty tubs a day from a furnace, and then you are getting out a good production. 2

Q. That is comparing your factory, the New Brighton and Louisville factories?

A. Yes, sir; as to the other factories, it is merely hearsay. I just hear the men talking from time to time and that is a thing you cannot always rely on.

Q. Yesterday you testified that there had been a change in the manner in which your enamelers got their powder by use of a dummy now; will you explain what a powder dummy is? 3

A. A powder dummy is a square box tapering down—probably eighteen or twenty inches at the top, and tapering down on all four sides to an outlet of about four by eight or something like that, and it is fed mechanically into the dredge.

Q. Of course the enameler only fills his dredge when the tub is in the furnace?

A. No, sir; it is necessary to get some powder while he is still dredging.

Q. How much does a sieve hold? 4

A. As near as I can tell about eight pounds; we use about eight pounds in a dredge.

Q. You mean in one of these two bowls you are talking about? A. No, sir; in a dredger.

Q. Well, upon an ordinary guaranteed tub how much powder do you put, how many pounds?

A. Take a five foot tub, there is more powder goes on a larger tub than on the smaller ones. Take the guaranteed

1 tub, it takes from twenty-five to twenty-eight pounds, to the best of my knowledge.

Q. Does the enameler always fill his bin while the tub stands before him after having once tested it?

A. Yes, he does not empty it, he just runs it down to a certain point and then it is necessary for him to take more enamel into it; if he let it run down until a part of the sieve would be uncovered, then it would just streak out.

Q. You said yesterday, on page 1170 of the record: "The furnace today, at the present time, is kept occupied practically all of the time. Q. How about the days when they
2 enameled by hand? A. A man had to raise his door and let his furnace stand idle for the purpose of going outside to recuperate a little; he did not have a tub in there." Were you referring there to the time that he was using the short-handled dredge?

A. I was referring to the time he used the short-handled dredge and it also applied to the time he was using the long-handled dredge.

Q. When the turns were ten hours?

A. Yes, sir; and at times when they were eight hours yet.

3 Q. As a matter of fact, today the enameler goes outside often when the tub is in the furnace, doesn't he?

A. Yes, sir; he may go outside for a minute or two while the tub is in the furnace, but he always keeps the tub in the furnace?

Q. You produced a sheet showing the percentage of your average losses showing the figures for the last two weeks of January, 1911? A. Yes, sir.

Q. There the percentage averaged about what, do you remember? A. I think 1.8 per cent.

Q. Is that a typical average?

4 A. That is a fairly normal average; it varies; sometime it will be 1 per cent; we have had semi-monthly reports less than 1 per cent; within the last year, we have had them with three per cent; it generally runs about 2 per cent. I would say that a 2 per cent. loss represents our average enameling loss on bathtubs.

Q. When you had your 3 per cent. loss, do you recall what the trouble was?

A. There wasn't any particular trouble at all; the thing fluctuated from one month to another.

Q. What is the chief cause, generally? Are you able to state what it is? 1

A. No, sir; I could not state positively.

Q. Well, approximately?

A. When our loss was 3 per cent. the early part of last year, there was one occasion that I can recall, and that was when I put on half a dozen men who were just breaking into the business, who had been helpers and we found it necessary to put on more furnaces and we took those helpers and put them on there, and naturally the loss would be higher while those men were working on it.

Q. I think you testified on direct examination yesterday that you used more enameling powder than you used to use; have you any figures showing what degree? A. No, sir. 2

Q. How much—have you any idea how much?

A. No, sir; I couldn't say.

Q. It is just your impression, is it not?

A. It is my impression.

Q. Where are your dredgers made?

THE WITNESS: Where are our dredgers made?
MR. GROSVENOR: Yes.

A. We make them in the factory.

Q. Did James Arrott ever work at your factory, or was he at the Allegheny factory? A. He was the Allegheny man. 3

Q. Do you know of any dredgers being shipped within the last year from your factory to any other factories in the United States?

A. I have no knowledge of them being shipped from our factory.

Q. The dredgers there are under your charge, are they not? A. Yes, sir.

Q. So you would know if there had been any?

A. Yes, sir.

Q. Now, as a matter of fact, in the Dawes & Myler factory that short handled dredge had been abandoned long before the Arrott patent came to you? A. Yes sir. 4

Q. This description has been given (reading). That method of tapping applies to the long-handle dredge?

A. Yes, sir.

Q. You had, however, abandoned this short wooden handle of four or five feet? A. Yes, sir.

Q. So that description did not apply to the method in

1 vogue in your factory at the time the Arrott patent was adopted by you? A. No, sir.

Q. Now, this Arrott dredger is a useful tool is it not, in the manufacture of sanitary enameled iron ware?

A. Yes, sir.

Q. And it is a valuable tool in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Is it an essential tool? Now, you know the difference?

A. It is.

Q. Is it absolutely necessary for you to have that Arrott dredger in order to make sanitary enameled iron ware?

2 A. Yes, sir.

Q. It is necessary? A. Yes, sir; in my judgment it is.

Q. Now, you did make sanitary enameled iron ware with this dredge known as Petitioner's Exhibit No. 279?

A. Yes, sir.

Q. Have you a copy of your deposition in the other case?

A. No, sir.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Mr. Shield, will you kindly take up that long-handled dredge and hold it in the way which you demonstrated this

3 morning?

(The witness then did as requested).

Q. Now, as I recall it was brought out in the testimony this morning the length of handle between you and that sieve body on the old long-handled dredge was a little more than the length of the handle on Exhibit known as Petitioner's No. 280 which is the Arrott dredger. Was there any object in having a portion of the handle, say about a foot, project beyond your elbow? A. No, sir.

Q. It just went that way?

A. Yes, sir; we sized that up and then we made the third

4 one at that length and kept ordering them at that length.

Q. But that is the position about where the man stood (indicating)?

A. Yes, sir; if they got clean back to the end it made it so much harder to swing that or guide it.

Q. Why?

A. Because it was further away from the support and the end of the dredge.

Q. Then, swinging it was hard work even though it was supported? A. Yes, sir; even though it was supported.

Q. Did it tire the man's arms? A. Yes, sir. 1

Q. Did conditions vary as to the exertions they had to make in enameling?

A. In using this dredge they did, even with this support on it. It was a man's object to get as much powder as he possibly could in that bowl within reason. Then it was necessary for him to help support that weight, because when the powder was beat out and flowed down there that lessened the weight there and the counterbalance being strong it was necessary for him to bear down on this as the amount of enamel ran out of the sieve; the idea was to start with the maximum amount and he would have less time to come 2 away from his tub and come over to the boy and get more powder in.

Q. And besides the exertion of swinging the sieve, the man also had to do some lifting and bearing down during the operation? A. Yes, sir.

Q. Was it an easy matter for him to swing the sieve even though it hung from the counter-weight, using one arm?

A. No, sir; that was one objection to this sieve. That handle was so long that it was hard to swing it around in this manner.

Q. Then the only benefit you got from its use was that 3 the workman was farther away from his tub?

A. Yes, sir; and it made it lighter; he did have to exercise less strength to hold this dredge, up than with the old short-handled dredge.

Q. But he still had some hard work to do?

A. He had some hard work to do.

Q. How about the tapping, was that easier than with the short-handled dredge?

A. No, sir; if anything that was a little harder; the longer the handle the harder you have to strike to vibrate it, but to overcome that we used a heavier tapper on this long- 4 handled dredge than we did on the short-handled dredge, to overcome part of that.

Q. In order to make a good tub the enameler had to make his tappings as rapidly and as regular as possible?

A. It was necessary to make the tappings fast and regular.

Q. And the heavier the tapper the harder it was to do it?

A. Yes, sir.

Q. Did you find any of your enamelers that with either

of the old hand dredges could maintain a regular hard tapping? A. No, sir.

Q. They slowed down toward the end, didn't they?

A. Yes, sir.

Q. And that is what caused the swelling of the wrists which you testified to? A. Yes, sir.

Q. This long-handled dredge gave you an advantage in that you had a larger surface for discharging the enamel?

A. Yes, sir; a larger surface for discharging.

Q. Just to clear up one small point, of course when you changed this table so that the enameler could operate it with his foot, you had to put in a compressed air pipe and connections for turning it? A. Yes, sir.

Q. How many coats did you put on the high grade tubs when you enameled by hand?

A. Four at least and sometimes more.

Q. And how many of the guaranteed tubs?

A. Three, sometimes four, according to circumstances and conditions.

Q. You said at one time in your cross examination that you did very little experimenting with the Arrott dredger when it was adopted?

A. We did not do any experimenting with it when it was adopted.

Q. Then, how did you come to adopt it?

A. I went to the Standard Works in Allegheny; I saw the dredge in operation and I realized the benefits and advantages of it. We just proceeded to adopt it. I presumed the Standard to have done the experimenting.

Q. You just took the results you found there?

A. Yes, sir.

Q. Did they satisfy you? A. Yes, sir.

Q. How did the steadiness with which the men worked with the Arrott dredger compare with that with which they worked with the old hand dredge?

Mr. GROSVENOR: I object to the coupling of the old hand dredges together; the evidence shows that there is as much difference between the short-handled dredge and the long-handled dredge as there is between the long-handled dredge and the Arrott dredger. The question should distinguish between the two. The conditions shown in the evidence are

entirely different. It was shown that with the short-handled dredge the enamelers wore all kinds of protection and with the long-handled dredge he wore none. The question is leading and improper. 1

A. The men worked very much steadier after we adopted the Arrott dredger than they did when we used the hand dredges.

Q. Meaning specifically during the using of the old long-handled dredge? A. Yes, sir.

It was brought out this morning in the demonstration the differences in the way in which the workmen held the Arrott dredger and the way they held the long-handled dredge. There was also a difference in the way they stood; that is, the enameler turned around with one foot in this position and the other foot forward? 2

Mr. GROSVENOR: I object to that as leading.

A. The man with the long-handled dredge never stood still; as we use the Arrott dredger the man stands with his left foot forward and some stand with the right foot forward and the ball of the foot on the fo[illegible]e.

Q. And standing that way th[illegible]ler simply swings his body in the process of enameling the tub? A. Yes, sir. 3

Q. Whereas with the old long-handled dredge the enameler had to be moving around constantly? A. Yes, sir.

Q. I have forgotten whether you said you knew there had been any change in the composition of the enamel after your adoption of the Arrott dredger?

A. I said there had been a change in the composition of our enamel, yes, sir.

Q. But you did not know what it was? A. No, sir.

Q. What was there characteristic of the change which enabled you to say that there had been a change? 4

A. The enamel, after it was applied to a piece of ware, was solid, with a denser white and a higher finish.

Q. Were the grades of powder hard or harder?

A. The enamel itself was harder.

Q. Which fuses the more readily, a hard enamel or the soft enamel? A. A soft enamel.

Q. You have referred to this fork for shifting the tub in and out of the furnace; how heavy is that?

Q. And you don't know what it is?

A. Not always; no, sir.

Q. In regard to distance, the man who handles that Arrott dredger stands exactly as near, if not nearer, to the tub than he did when he used the long-handled dredge?

A. Yes, sir.

Q. That is, with the Arrott dredger he stands a trifle nearer? A. Yes, sir; that is correct.

Q. Now, you said that you never saw a man who was able to keep that tapping movement going through an operation without becoming fatigued?

A. If he is going at full speed.

Q. Do you mean that? A. Yes, sir; yes, sir.

Q. That tub is only out of the furnace a few minutes?

A. It was out with this long-handled dredge more than five minutes.

Q. Are you positive of that? A. Yes, sir.

Q. Sometimes when it was hot and put back again for the second coat it would not stay out five minutes?

A. Not every time.

Q. There is an interval of rest while the tub is in the furnace, is there not? A. Yes, sir.

Q. Do you mean to say that you have never seen an enameler able to move that tapper while that tub was on the table two minutes or five minutes and keep that up regularly?

A. I have neven seen an enameler starting out as fast as they ordinarily start out and maintain that speed and motion; when he comes to the tail of the work his stroke becomes slacker.

Q. Even though it is only out two minutes?

A. Yes, sir; in putting the enamel on the tub.

Q. Does it make a difference whether the tub is out three minutes or five minutes?

A. Certainly; there is a difference.

Q. How many years is it since you saw one of these long-handled dredges operated? A. Ten years.

Q. You have not seen one in ten years?

A. It has been ten years since I saw one in operation; yes, sir.

Q. Your recollection is pretty good for that length of time, is it not?

A. It is a thing that I was with all the time, every day, and saw it hundreds of times a day; I never made a practice

of standing and watching one man to see how much his stroke diminished, but in passing through the factory, I noticed that a man begins to fag at the end of a dredge. 1

Q. Does the force of the tap affect the amount of powder that comes out?

A. Yes, sir; the harder you strike it the more powder you get.

Q. When you take the tub and put the first coat on, do you get more on than on the next time?

A. If you get enough on the first time it is not necessary to put any on the second time, but if you don't get enough on the first time, then it is necessary to put more on the second or third time, as the case may be. 2

Q. If you get more on when you tap it harder than you do when it is tapped lightly may it not be that that lighter tap which you refer to is due to the fact that the enameler does not want so much powder on the tub?

A. In light tapping it is easier to tap for a great length of time and make it regular.

Mr. GROSVENOR: Will you read my question?

The last question was then read by the stenographer. 3

A. Not in every case; no, sir.

Q. May that not be that when the tapping is lighter it is because the enameler wants to get less powder on the tub? You said the amount of powder depended upon the force of the tap?

A. I want it understood that the speed at which he tapped diminished, that it was not as fast; in striking the thing he started up like that (indicating) and toward the end his speed was not as great nor as hard.

Q. Doesn't the speed of the blow have an effect on the amount of powder that comes out? 4

A. The speed of the blow makes it come out more regularly; the speed regulates the flow.

Q. In using the automatic tapper at times you want more powder to come out than at other times?

A. No, sir; the air pressure is regulated according to the amount of powder that the man is using. If it is a little hard to get out through the sieve, he reaches down to the valve and gives it a little higher air pressure.

Q. And then more powder will come out? A. Yes, sir.

Q. Does he go through the enameling of a tub at any time without pressing that button?

A. He has to press this button (indicating button on Arrott dredger, Exhibit No. 280).

Q. When you press that button that relieves the powder and makes it come out? A. Yes, sir.

Q. And when you don't want as much powder, then what do you do?

A. When you are starting on your tub and you want plenty of powder you just pass along in that manner (indicating); the slower you move that dredger over your piece the more powder you will deposit; on the second dredge or coat, if you want to put less powder on there, you just pass your dredger that way (indicating).

Q. That is you pass your dredger more quickly?

A. Yes, sir; when that button is pressed it is simply that you have pressure there or you haven't any—

Q. The automatic dredger is more convenient than the hand dredge, we admit, but is it not a matter of fact on the other hand that the hand dredge has certain advantages and that one of them is that when you want to you can get a smaller amount of powder for a certain place than you can with the automatic dredger? Is not that right? Let me read you this (reading).

Mr. CHRISTY: Objected to by counsel for the Defendants for the reason that cross examining counsel should not attempt to argue with the witness, but ask him his own opinions unaffected by what somebody else may or may not have said.

Mr. GROSVENOR: I am trying to cross examine the witness as to this method of tapping with the hand.

Q. This refers to the Ditheridge patent; did you ever see the Ditheridge pneumatic sieve? A. No, sir.

Q. Do you know if that is used by the J. L. Mott Iron Works, at least owned by them, one of the Defendants in this case? A. No, sir.

Q. You never saw one of them?

A. To the best of my knowledge, no.

Q. Referring to that page, this specification says: "It is difficult and sometimes impossible to stop the flow suddenly. It is difficult to vary and control the force of the blows." Now, referring to the hand tapping, doesn't the

force or the changing of the force of the blows affect the amount of powder coming out? 1

Mr. CHRISTY: The quotation in the last question is objected to as being wholly incompetent, particularly in view of the fact that the concern owning the patent referred to was desperately endeavoring to avoid the Arrott patent and equally as desperately endeavoring to obtain a patent itself.

Mr. GROSVENOR: That is merely a statement of facts. There is nothing like that in the record. Answer the question. 2

A. Yes.

BY Mr. GROSVENOR:

Q. Now, you have testified that you have never used one of these long-handled dredges. It was after you ceased being an enameler and had become a foreman; is not that right?

A. Yes, sir.

Q. Are you able to state still that the diminishing of the force of the hand tapping or the decreasing of the number of the blows may not have been in order to get less powder and not due to exhaustion as you seem to imply in your testimony? A. Generally it was due to exhaustion. 3

Q. Some cases you will admit were due to the fact that the enameler wanted to get less powder on the articles?

A. Yes, there may have been one spot in his tub that the enameler wanted to get less powder on; certainly I will admit that.

Q. Then, it was possible for the enameler to enamel a tub without becoming so exhausted that he could not control the tapping?

A. Well, my opinion is that when a man was done dredging his tub he was tired out for the instant. 4

Q. Just for the instant? A. Yes, sir.

Q. Well, you have testified that he was exhausted before he had completed the dredging; is that what you want your testimony to mean?

A. No, my testimony is, or what I want it to convey, was that there was a perceptible slackening toward the end of the dredging in the number of beats.

Q. But that may have been due to the fact that the enameler wanted less enamel, is not that right?

A. In very few instances; there was a possibility of that being the case at times; yes, sir.

Q. Who is at the head of the manufacturing end of your Company?

A. The head of the Standard Sanitary Manufacturing Company—

Q. Yes, the head of the manufacturing end of the business?

A. Mr. E. L. Dawes is the General Manager of all the factories.

Q. He is the superior of the superintendent of your factory, Mr. McKinney?

A. He is the superior of the manager of our factory, Mr. McKinney.

Q. Do you know Mr. Dawes? A. Yes, sir.

Q. You have been on the stand two days? A. Yes, sir.

Q. Has he been in the court room nearly all the time that you have been testifying?

A. Yes, sir; he has been in here the greater part of the time.

Q. Is he here now? A. Yes, sir.

Q. He has been here during the testimony respecting the exhaustion on the part of the tappers, is that right?

A. Yes, sir.

RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. You say the force of the tapping with the long-handled hand dredge affected the quantity and the flow of enamel, that is if a man hit a hard blow he would get a heavier flow?

A. Yes, sir.

Q. Did all men tap with the same force or with the same uniformity of speed?

A. To the best of my recollection there was no uniformity. One man might be a great deal stronger than another and be able to beat faster and harder.

Q. And one man, then, could get a better flow of enamel than another? A. Yes, sir.

Q. With the Arrott dredger is there any difference between the uniformity of flow of one enameler and another?

A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN S. JOBE, a witness produced on behalf of the de- 1
fendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Will you please state your age and residence?

A. My age is thirty-four, or I will be my next birthday. My residence is Salem, Ohio.

Q. What is your occupation?

A. General superintendent of the National Sanitary Manufacturing Company.

Q. How long have you been engaged in the manufacture of sanitary enameled ironware? A. About seventeen years? 2

Q. Will you tell us your career in that business?

A. I began in the enameling business with a firm at Braddock, Pennsylvania.

Q. What is the name of the firm?

A. McVay & Walker; then I came to the Allegheny plant for the Standard Manufacturing Company. I worked with the Standard Manufacturing Company, and then went with the Champion Manufacturing Company at Allequippa, Pennsylvania; some called that firm the Champion and some called it the Victor; I believe it was the Victor instead of the Champion. They changed the name of it when I come 3
there. Then I worked for the United States Sanitary Manufacturing Company, at Monaca, Pennsylvania; now I am employed with the National Sanitary Manufacturing Company at Salem, Ohio.

Q. Did you state what your position was with that company? A. General superintendent.

Q. How did you start in with McVay & Walker? What position did you have?

A. I started in as a powder boy at the furnaces.

Q. Then what did you do? A. I was advanced to a forker. 4

Q. And any further?

A. Yes, then advanced to a dredger or enameler.

Q. And you enameled there for how long?

A. For about a month, and then I went with the Standard Manufacturing Company at Allegheny.

Q. When was it that you went with the Standard Manufacturing Company?

A. About 1895, at the time President McKinley was

1 being nominated, because the next year I went to Canton to see President McKinley.

Q. What was your position at the old Standard plant?

A. I applied for a position as an enameler, but I got a position as a helper, because they did not need enamelers. I stayed in that position for about eight months, and then I was put on as an enameler.

Q. How long did you enamel there?

A. For five or six years, to the best of my recollection.

Q. Then you went to Aliquippa?

A. Yes, sir; for a couple of weeks, but I returned to the
2 Standard plant, because the work was too hard at the Aliquippa plant. I was only a young man there. They did not have the equipment that the Standard Company had, and I went back to them.

Q. How long were you with the Standard Manufacturing Company? A. About six years altogether.

Q. What was your position with the United States Sanitary Manufacturing Company?

A. I started in there as an enameler and worked there as an enameler for about six months, and then was appointed to the foremanship. I was a foreman for about a year and
3 was promoted to enamel maker or mixer; that is what it is called. I kept that position until I retired to go with the National Sanitary Manufacturing Company.

Q. When did you go with the National Sanitary Manufacturing Company? A. Three years.

Q. When you went to the Standard plant in 1895, or thereabouts, what appliance or device did they use for applying the enamel to the ware?

A. They used hand sifters, hand sieves.

Q. Will you describe it a little more fully.

A. It was a bowl on a wooden handle with a wire mesh
4 on the bottom, supported by rings and hoops similar to a drum. They had an iron tapper, by which you rapped on this wooden handle to apply the enamel to the ware.

Q. Something similar to this dredge known as the Government's Exhibit No. 278? A. Exactly like that.

Q. That is a good sample of that dredge, as you recollect it? A. Yes, sir.

Q. Did they use that dredge all the time that you were there? A. No, sir, not all the time that I was there.

Q. What else did they use?

A. They invented what they termed the air dredge. 1

Q. About when was that, can you remember?

A. I think that was put in there, to the best of my recollection, about 1899 or '98; I don't recollect exactly the year. It was around that time.

Q. Did they displace the old hand dredge entirely in that way? A. Yes, sir.

Q. Did you personally use both forms of dredge?

A. Yes, sir.

Q. You did? A. Yes, sir; used both forms.

Q. What was this Arrott dredger like?

A. The Arrott dredger was also a bowl made out of 2 aluminum; it was about 10 inches in diameter and three inches in depth—

Q. (Interrupting): Was it substantially like this Exhibit No. 280? A. Yes, sir.

Q. During the time that you were enameler there, and before they introduced the Arrott dredger, did you use the hand dredge similar to Exhibit No. 278 regularly?

A .Yes, sir.

Q. How did you find the work?

A. I found the work very tedious and very hard on my arms and health. 3

Q. What was the trouble with your arms?

A. The weight on the one arm and the tapping with the other, which made me support my wrists with straps.

Q. Which wrist? A. This wrist (indicating).

Q. Are you left handed or right handed?

A. Left handed; that is, I tapped with the right hand; I held up the dredge with my left hand and supported it with the elbow, and this way of supporting it with my hand here (indicating) it bore down on my wrist and caused it to become very weak in there. I was a young man when I began, but I was a healthy man. 4

Q. Were you the only one who suffered in that respect, or did the other men also complain of that?

A. No, sir, the other men also complained of it.

Mr. GROSVENOR: I would suggest that counsel show how much of that was due to the short-handled dredge and how much of it was due to the Arrott dredger.

Q. How did you find the tapping with regard to regularity? A. It was very irregular.

1 Q. How was that?

A. Well, I was considered a speedy man, and I was a young fellow and I worked very rapidly; I would start out and beat it very rapidly, probably going two or three hundred blows a minute, when I started the operation of applying the enamel on the cast iron ware, but when I was through with the tub or the article that I was enameling, I would cease with that regularity that I had been rapping, because my arm would fag out.

Q. About how hot was the tub?

THE WITNESS: About how hot?

2 Mr. CHRISTY: Yes.

A. I judge about 1500 to 1600 degrees Fahrenheit.

Q. Did you protect yourself from the heat? A. Yes, sir.

Q. What did you wear? A. Asbestos gloves or mitts—

Mr. GROSVENOR: I object to that, because the record shows that they were not required by the absence of the Arrott patent. In other words, this could have been done away with by adopting the long handled dredge. There is no direct relevancy between this protection and the issues in this case. In this case they

3 changed from one to the other without the intervening steps.

Mr. CHRISTY: I was lectured a few moments ago for introducing statements of fact into my objections. It seems to me that opposing counsel might be able to state his objections without encumbering the record with argument. Read the witness the question please.

The stenographer then read the last question and answer.

Mr. CHRISTY: And what else, if anything?

4 A. (Continuing): Also an asbestos covered front or jacket and heavy canvas apron.

Q. Did you have anything to protect your face at all?

A. And a mask on my face, with isinglass to protect my eyes.

Q. All bathtub enamelers did that at that plant?

A. Yes, sir; all bathtub enamelers did that.

BY Mr. GROSVENOR:

Q. At that factory?

A. Yes, at the Standard factory at Allegheny. 1

BY Mr. CHRISTY:

Q. Do you know how long it took you to give one coat to an average sized bathtub? A. Yes, I can remember.

Q. About how long?

A. It took me about four minutes to enamel a five foot bathtub one coat.

Q. Did you find that toward the end of the operation the enamel adhered as well to the iron as it did at first?

A. No, the enamel would not adhere.

Q. Did that have any effect on the quality of the ware? 2

A. Yes, it caused us to have a large discount—the other workmen and myself—I had a discount of four or five tubs a day.

Q. Due to bad enameling? A. Yes, sir.

Q. And you were only paid for good tubs? A. Yes, sir.

Q. How many did you enamel a day, on an average?

A. About from twelve to fourteen, if I was feeling good.

Q. Did any other men do that?

A. No, I was the only man who kept up that average of fourteen; there were other men who could produce twelve and thirteen. 3

Q. In how many hours was that?

A. In eight hours work.

Q. How about when the air dredger was introduced; did you work with that from the start?

A. I was the one who experimented on it for J. W. Arrott, Jr.

Q. And when it was used commercially you were the first one who used it?

A. Yes, sir, I was the first one who used it.

Q. Did you find that you could produce more tubs with that? 4

A. I found that I could do my work about 75 per cent. easier than by the hand method, and do more work and better work, and my discount was less and I made more money.

Q. Because you did not have so many tubs discounted?

A. Because I did not have so many tubs discounted, and it enabled me to make one or two more tubs every day in an eight hour shift.

Q. Did you find it difficult to distribute the enamel evenly on the tub with the Arrott dredger?

1 A. No, sir; it was easy to distribute the enamel; in fact, it did it itself; all you had to do was to guide the dredger.

Q. Whereas with the old hand dredge—

A. (Interrupting): You had to carry it over the surface of the iron and rap very hard and very rapidly or the enamel would roll off of the side and drop to the bottom and cause big blisters, buckeyes, I would call them.

Q. That is when using the hand dredge?

A. Yes, sir; because the enamel dropped from the sides to the bottom; I had most of my defects from that.

Q. When you came to use the air dredger, did you find
2 that it was as great a strain on the wrist?

A. No, because I held it in the opposite way. Instead of laying it in the palm of my hand, I just laid it down—held it down.

Q. As you hold a pitchfork?

A. Yes, sir; that strengthened my nerves on the top of my wrist and I could do away with the strap.

Q. Did it cause any great exertion, as compared with the old hand method?

A. No, sir; it did not cause any exertion, and it removed the weight from my back. We had it suspended from a
3 pulley and I had no weight on my back; I had two hands, then, to operate the air dredger with, while with the hand dredge I could not use my hands; I had to apply the enamel while the iron was hot, in order to get a good finish, a high lustrous tub, as the inspector demanded from us, but with the air dredger I could produce in much less time a nice, smooth, high lustred tub, smooth as looking glass, and it did away with the powder dropping from the sides, and I could get the tub back in the oven lots of times while it was still red.

Q. Was there any opposition on the part of the men to
4 that method?

A. The only opposition was that we got a reduction on the price.

Q. Did that reduce your wages any?

A. No, sir; it increased them after the air dredger became in use.

Q. Although you were paid less, you made more?

A. Yes; that is, I did.

Q. And the other men? A. Yes, sir.

Q. What difference, if any, was there between the old

hand dredge and the Arrott dredger in the way the powder 1
was discharged from the sieve bottom?

A. The difference is of such a character that while rapping on the wooden handle of the hand dredge, the flow of powder would be in streaks, and where the rap of the hammer was the hardest, you would get the most powder, a big lump of powder; but around the sides where the rap did not affect it so, you would get a real thin stream, and naturally the tub was covered in spots, heavy and light, and would show a great waviness, like the wind making waves on the river, or like on a wash board; if the powder was not pulverized right, it was a hard matter to cover the tub regularly. 2
But, with the air dredger, there are no streaks. The rap is uniform at the centre, and the rap is uniform at the edge, and the flow continues the same—it is uniform. While the powder is flowing from the Arrott dredger, it flows and mixes at the same time. You deposit it in a long stroke, but with the hand dredge it is not deposited with a long stroke, but falls where you hit the hardest, and it lays there in a lump, and you have no chance to spread it in a long spread. You do not get that smooth effect on the castings or on the surface of the tub, or on the article that is being enameled.

Q. Coming down to the time you were made foreman, how 3
did you find the training of the men? Was it as difficult as in the days of the old hand dredge?

A. No, the training is nothing to speak of, with the Arrott dredger. You do not have to train a man. Any intelligent man, after a day or two days' instructions ought to be able to use the Arrott dredger.

Q. Is that your actual experience? A. Yes, sir.

Q. Have you had any occasion where that was shown?

A. Yes, sir; if the foreman knows his business, he will tell the man before he catches hold of the dredger what to do and how to work it to get that flow from it, and the smooth 4
effect on the casting.

Q. What experience did you have?

A. At the Monaca plant of the United States Sanitary Manufacturing Company, I had the men go on a strike, the enamelers; they wanted pay for all the work and that would not be a proper thing to do. They all struck, and I immediately went to the cleaning room where I had foreign labor employed, and I brought half a dozen men in the enameling room, and I can speak in foreign languages, and

1 I said, "Here, John," or "Mike, do so and so with these dredgers." And inside of a day or two I had them working, and then the old men came back and wanted me to take them back again, but I had their places filled. The strike lasted only two days.

Q. Could you have done that with the old dredges?

A. It would have been an impossibility; I could not do it.

Q. When you take on men in this way, do you have any difficulty in teaching them how to take the tub out of the furnace?

A. No, sir; you have no difficulty showing them that. If
2 a man cannot grasp it inside of one day, he will never make an enameler.

Q. How can he tell how to do that?

A. Whether it is cherry red, or bright red or hot; it depends on how you tell him to take care of his first coat or slush coat. Of course, a man with experience of knowing how to make the enamel can tell the men better. He can tell them how to use it—

Q. Did you grade your enamel?

A. Yes, sir; when I put a new man on, I gave him a certain kind of enamel; I would tell him to get his tub so hot
3 because he would have 100 degrees to go on, and then he would get along all right, if he followed out my instructions.

Q. And there was no more difficulty in teaching them as to the heating of the tub than in the use of the dredge?

A. Not a bit of it.

Q. How does the quality of enamel on tubs of the present day, as applied by the Arrott dredger, compare with the quality of the enamel at the time that the hand dredge was used?

A. The quality of the enamel is of such a character that it makes it absolutely sanitary.

4 Mr. GROSVENOR: I shall ask counsel to specify which enamel he means. Is this the enamel used by the Standard Sanitary Manufacturing Company or the National Manufacturing Company or the United States Sanitary Company.

Mr. CHRISTY: I mean generally, within the experience of the witness.

THE WITNESS: At the present day?

Mr. CHRISTY: Yes, down through all your experience to the present time.

A. Down through my experience the enamel of today is of a better quality. 1

Q. In what way?

A. In its vitreous substance and in its artistic finish.

Q. Is it harder or softer?

A. It is harder than when we used the hand dredge.

Q. Would it have been possible to make it harder with the old hand dredge? Was that a commercial possibility?

A. No, sir; not to make it commercial. If a man bought a tub which was made by applying the enamel with the old hand dredge, he had an enamel which was porous. The softer the enamel is the more porous it is, because there are so many fluxes connected with it; the harder the enamel is the more porcelainous it is, thereby resisting the attacks of the elements, of heat and of hot and cold water. 2

Q. Why couldn't they apply a hard vitreous enamel with the old hand dredge?

A. Because you couldn't get over the surface in time. The scientific principle of enameling is to apply the enamel while the tub is at the hottest degree to which you can bring it; that is when you get the amalgamation of the enamel and the iron, and the first coat is what does it. That is the coat that goes into the iron, while the tub is hot, and the sooner you can apply it the better is the result, the more sanitary is the article, and it will not wear off, and when you take it in the house and bathe in it after six or seven months, it will not lose its finish, and if it loses its finish the pores are left open even into the iron, and that allows the dirt or any other foreign matter to accumulate on the inside of the pores and eat into the iron, makes a place for the germs and makes it unsanitary. 3

Q. And that was characteristic with the old hand dredge method? A. Yes, sir.

Q. But with the present enamel applied with the pneumatic dredger you get a harder surface? 4

A. Yes, sir; we get a more vitreous enamel at the present day that we apply with this pneumatic dredger.

Mr. GROSVENOR: I object to the reference to the old hand dredge, except in so far as it applies to the use of the short handled dredge. He has testified that he never used the other one.

THE WITNESS: I wish to state that this enamel ap-

plies to any kind of enamel which you can put on there and which you rap by hand. You cannot make a good strong vitreous enamel and produce an article such as the trade demands now. They do not only demand the best in quality, but they want it to look beautiful. When a man goes into his bathroom he wants to look upon something beautiful. When we used the old hand dredge, any quality of ware went. The quality demanded then was not as high as it is today.

Q. Did the adoption of the pneumatic dredger lead to a change in the mesh of the sieve?

A. Yes, sir; we changed it to twenty points higher.

Q. What do you use now? A. Sixty.

Q. What did you use?

A. A forty mesh. The reason we can do that is because we can pulverize it more—

Mr. GROSVENOR: I don't want to interrupt you, but are you speaking now of the Standard Sanitary Manufacturing Company or of the United States Sanitary Manufacturing?

THE WITNESS: It was the United States Sanitary Manufacturing Company that I was speaking of.

Mr. CHRISTY: All right.

THE WITNESS: The United States Company is where I introduced this enamel the first time. That is the first place I started to mix it. That is the first place I found out anything about making enamel, although I studied on it before.

Q. Is it an advantage to have a finer grade enamel?

A. Yes, sir; because it makes smoother ware. It fuses more evenly, whereas if you have larger grains it takes longer to spread out during the fusion. It looks kind of rough.

Q. And it is an advantage when you use the harder enamel? A. Indeed it is, and when you use the air dredger.

Q. Do you make the coating of the tub as thick as when the hand dredge was used?

A. At the present time, speaking of the National Sanitary Manufacturing Company—I don't know what they are doing at the other places now—but we do not make the coating as heavy as with the hand dredge. We only apply two thin coats. At the Standard Sanitary Manufacturing Company I

applied three coats of enamel on the tubs that I enameled by the hand dredge. 1

Q. Is it an advantage to have these two thin coats instead of three?

A. Yes, sir; indeed it is. It is an advantage in this respect, in that it gives the enamel more show to fit the iron. This enamel will have a greater tendency to hold to the iron. It will expand more readily and easily. When the tension is on it, it will expand more readily when hot water or cold water is applied.

Q. Did the Standard Sanitary Manufacturing Company change the number of coatings which they used? 2

A. Yes, sir; two coats.

Q. And formerly they had applied three? A. Yes, sir.

Q. That ran through their entire line, did it?

A. Yes, sir; that ran through their entire line.

Q. Suppose you tried to use finely powdered enamel, such as you use now, with the old hand dredge; what would have been the result, if you know?

A. I never tried to use the fine enamel in the old hand dredge; in fact, my opinion is this: If you used the fine enamel with that dredge, it would take longer to fuse it, that is, this vitreous enamel would take longer to fuse. 3

Q. Why?

A. Because it would be on there cold—the tub would be cold; you could not get it on there in time; it would take so long to heat it, and as enamel is a non-conductor of heat, it would be harder to fuse that than the soft enamel. The heat has to come through the iron to the enamel.

Q. When the Arrott dredge was adopted at the Standard plant, did it bring about any reduction in the working force at each furnace?

A. Not to my recollection when I was there.

Q. You don't remember? 4

A. The only time we made a reduction in force when we had the air dredge, was when we got in the powder monkey, as we call it.

Q. And how about the table?

A. We had a man operating the table at the Standard then.

Q. Was any change made in that?

A. Yes, they tried the air table; I was put on the air table and I operated it for about two months.

1 Q. You did that yourself? A. Yes, sir.

Q. Could you have done that conveniently if you had been using the hand dredge?

A. No, it would have been a very hard job to do it and get the work done as you would like to do it. A man would have to do a lot of squizzing around with the hand dredge to find his place and look for the valve and one thing or another. With the hand dredge you must move both feet, but with the air dredge you stand still on your feet and only swing your body. You have both hands to hold on with, and you really have a longer reach, although the handles may be
2 the same identical length, but you do not have to squeeze two feet of it under your arm and hold it with your elbow. You put it in front here (indicating) and you can turn it in front of you. I used to have to wear rubber heels. It hurt my back and side and—

Q. (Interrupting): Did the introduction of the Arrott dredger bring about any difference in the weight of the tubs, in the castings?

A. In my experience, yes; at the plant of the Standard at that time, the five tubs, if I remember right, I was working pretty close to the cleaning house and I could see
3 the tubs going over the scales marked "275" and "285" and when this dredger was introduced, I saw them going over as low as "225" and "235" and "240."

Q. How do the tubs you make at Salem now compare with those made before?

A. At the National Sanitary Manufacturing Company now I have reduced all of the patterns to the minimum weight, and that amounts to about 25 per cent. less than the tubs that I remember at the Standard.

Q. Could you make these light weight tubs commercially with the old hand dredge?

4 A. I suppose with half a dozen coats—

Q. I mean commercially.

A. No, sir; it would not pay to do it. At the National Sanitary plant, this air dredger has enabled me to revolutionize the enameling process.

Q. You have used or have had this air dredger used under you, first at the Standard Sanitary Manufacturing Company, and then at the United States, and then at the National?

A. Yes, sir.

Q. What have you to say of the importance of this Arrott dredger? 1

A. When we first started operations at the National, I spent several thousand dollars trying to get around this Arrott patent, so that I could get a dredger that would produce good ware. I got several of the best dredgers in the country; it was their business to start new shops, and we went to work, but I could not sell that ware. We piled up seconds after seconds, and we got in trouble over it; one jobber said we should treat him the same way we did the other men. I said, "We will have to have this dredger; that is all there is about it," and I got an air turbine and rigged 2 it up and we have been using it ever since, and we applied to the Standard and got them to be lenient with us. Since using this air dredger I have built a new furnace which permits me to do double the amount of work. Formerly, in other plants that I visited or knew about, they could produce sixteen to eighteen tubs on a single furnace with the air dredge. Now, I have invented a double furnace. The tub is heated in one compartment and is completed in another. A man does not have to leave that furnace. He works from six to eight hours—on the smaller articles it is six hours and on the larger it is eight hours—and they turn out as 3 much in six hours on the small ware as they did in eight hours.

Q. Do you know of any other apparatus or tool that would allow you to turn out the ware to the same advantage, so that you could continue in business without this air dredger?

A. If I did know of any I would not pay a cent royalty on this.

Q. Do you know of any?

A. No, sir. My attorneys have turned me down, because I have been working on it, but you cannot produce any air 4 dredger that will not infringe on this patent.

Q. Could you have used your improved furnace with the old way of using the hand dredge?

A. No, sir; it is impossible to get it. I can produce in eight hours thirty-three tubs with this dredger. I would like to see the man who could stand up and use the hand dredge. Why, he would not have any arm on him when he got through.

1 By Mr. GROSVENOR:

Q. Are you referring to the long or the short handled dredge?

A. Either one of them. I would not use that long-handled hand dredge. It is a man-killer; it will kill you in six months. It hurts your wrist and your back and is not fit to use.

Q. Then, is this air dredger a necessity for commercial operation?

A. Yes, sir, it is. I would close the plant down tomorrow if I had to stop it.

2

Mr. CHRISTY: I think that will be all.

Examination Suspended.

At this point the hearing was adjourned until the following morning at ten o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

3 THE UNITED STATES OF AMERICA,
Petitioner,

v.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

Pittsburgh, Pa., February 16, 1911.

4 Pursuant to adjournment the taking of testimony for the Defendants was resumed in the Post Office Building, in Pittsburgh, Pa., on the 16th day of February, 1911, at 10:30 o'clock a. m.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General.
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY,
on behalf of the Defendants.

JOHN S. JOBE, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows: 1

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. Are you now making the tubs that you call your double X tubs? A. Yes, sir.

Q. Is that a high grade tub?

A. The highest grade tub we produce in the shop.

Q. About what does the casting weigh?

A. The castings vary in weight according to the size of the tubs we produce; take a five foot three inch rim weighs from 335 to 365; then take a five foot five inch rim, and that will weigh from 400 to 450 pounds. The six foot five inch rim will weigh from 475 to 500 pounds; that has a cast base on the bottom. 2

Q. That is on the tub?

A. That is cast right on the casting; that is what makes it weigh so much.

Q. Would it be possible, in your opinion, for an enameler to enamel tubs of the weight you have given, using the old hand dredge.

Mr. GROSVENOR: I do not want to object to that question except in so far as I think it should be limited first to the short-handled dredge and then to the long-handled dredge; otherwise the record will not be clear. 3

Mr. CHRISTY: You may answer as to both forms.

THE WITNESS: Answer as to both forms?

Mr. CHRISTY: Yes.

THE WITNESS: You mean this double X tub?

Mr. CHRISTY: Yes.

A. In my opinion I could not get a man at the present day to enamel this bathtub inside and outside by either the short-handled or the long-handled hand dredges; it is impossible to produce this tub with those hand dredges. 4

Q. What have you to say as to the comparative trade standards of bathtubs in 1898 and today?

Mr. GROSVENOR: That question is too broad; are you referring to the bathtubs of the Standard Sanitary Manufacturing Company or the United States Sanitary Manufacturing Company or the National Sanitary Manufacturing Company or all bathtubs in the trade?

1 Mr. CHRISTY: I mean tubs that would be acceptable to the trade generally?

A. In my opinion I would judge that the standard of the tubs today produced by the Arrott dredger are about 75 per cent. better in quality than they were when produced by the old hand method of applying the enamel.

Q. Will the trade today generally accept the tubs of the quality produced in 1898 as commercially good quality tubs?

A. The jobber of today will accept it as a B quality tub, but not as a first A grade quality or a five year guaranteed or a two year guaranteed tub.

2 Mr. GROSVENOR: I want to object to this until counsel shows this witness has some acquaintance with the jobbing trade. You have not shown that he has anything to do with the distributing end of the business.

Mr. CHRISTY: Possibly I should have left these inquiries for some other witness, but understood from a portion of the direct examination of this witness that he was familiar with the trade.

Q. Will you please state, Mr. Jobe, what was your familiarity with trade conditions and your observation of 3 the commercial quality of tubs in 1898, and what opportunities you have since had to be familiar with the trade?

A. My observations are from the inspector's report that I receive daily on my production by hand-dredging and also from the reports of my work that the inspector handed to me, by the air-dredger; and the quality I am familiar with that I produced at that time with the hand dredge and what I produce now with the air dredger. The quality which I produce today at our factory, that is, the supervising of the production of this article and from the amount of ware we have returned and the complaints we get as to the quality 4 or the ware—from these points I gather how the quality and inspection of the work must be.

Mr. GROSVENOR: Counsel has not shown that he has had any experience with the distribution of the ware or the selling of it in 1898.

Mr. CHRISTY: That will be all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You said you went with what company, first?

A. I began operations with the McVay-Walker Company 1
of Braddock, Pennsylvania.

Q. How long were you there? A. About a year.

Q. What year was that? A. About 1894 or early in '95.

Q. What form of dredge were they using at that time?

A. A hand-dredge, a short-handled hand dredge.

Q. Like Petitioner's Exhibit No. 278? A. Yes, sir.

Q. The whole weight of that was carried in the hand?

A. Yes, sir.

Q. There was no suspension from above? A. No, sir.

Q. And from there where did you go?

A. To the Standard Manufacturing Company in Alle- 2
gheny.

Q. And you became there what? A. A table man.

Q. You applied for the position of an enameler?

A. Yes, sir.

Q. And there was none open? A. No, sir.

Q. For how many months?

A. Oh, six months, I suppose, as well as I remember now.

Q. This was the Allegheny factory? A. Yes, sir.

Q. This was in what year?

A. About '95, if I recollect right, or '96.

Q. Did you use this same short-handled hand dredge 3
there?

A. Yes, sir; identically the same.

Q. Until the Arrott dredger was installed in 1899?

A. Yes, sir.

Q. Have you ever been down to the New Brighton factory?

A. Yes, sir.

Q. During those five years? A. No, sir.

Q. Did you know at the time you were working at Allegheny that the New Brighton factory was using the long-handled dredge? A. No, sir.

Q. Using this short-handled dredge at Allegheny you had 4
these protections which you described yesterday; is that right? A. Yes, sir.

Q. At that time had you seen the long-handled hand dredge in operation there? A. No, sir.

Q. Did you know that where the long-handled dredge was in use the workman did not require or use the protections used by yourself and the other men using the short-handled dredge? A. I had not heard of it.

Q. At that time?

A. Yes, sir, when I was enameling at the Standard Manufacturing Company.

Q. During the time that you were at the Allegheny plant prior to the introduction of this Arrott dredger, was there any counterweight to hold up the weight of the dredger?

A. No, sir.

Q. When was that first installed?

A. When the air-dredger came in, only on bathtubs.

Q. Well, for the small articles they do not use the heaviest dredger; don't they use a smaller dredger?

A. They use a dredger eight inches in diameter and six inches in depth for the small articles.

Q. That is smaller than the one used for the bathtubs?

A. Yes, sir.

Q. When the Arrott dredger was put in, that is when the first counterweight was put in also? A. Yes, sir.

Q. Was the counterweight used for the manufacture of any articles prior to the introduction of the Arrott dredger?

A. No, sir, not to my knowledge.

Q. Did you know that for four or five years before the Arrott dredger was installed at the New Brighton plant the long-handled dredge was supported by a counterweight such as you used with the Arrott dredger? A. Just from hearsay.

Q. Was that hearsay at that time or since?

A. No, at that time.

Q. You had understood at that time that the dredger was supported at the New Brighton plant by counterweights?

A. I had heard of it, but I did not know exactly whether it was so or not.

Q. Had you heard that the dredger employed at the New Brighton plant was the long-handled hand dredge?

A. Just from hearsay, I didn't know it.

Q. Then you had heard of the long-handled hand dredger?

A. About two years after I was at the Standard I heard of some plants, particularly the New Brighton plant, using the long-handled dredge on bathtubs.

Q. And that that was supported—

A. By a counterweight.

Q. Was any effort made to install such a dredger at the Allegheny plant? A. Not to my recollection.

Q. This dredge, Exhibit No. 278, is like the old hand dredge you used at Allegheny?

A. Only the handle was heavier; it was an old sledge handle. 1

Q. Made of wood? A. Yes, sir.

Q. Was it about that weight (indicating)?

A. Yes, sir; I judge it was about this weight.

Q. Now, take this Exhibit No. 280; was the Arrott dredger about that weight? A. Yes, sir.

Q. That is several times heavier than Exhibit No. 278?

A. Precisely so.

Q. The handle being of iron? A. Yes, sir.

Q. And the chief difficulty with this short-handled dredge was the fact that the weight was all supported in one hand, was it not? A. No, sir. 2

Q. What was the chief difficulty? A. With the rapping.

Q. The rapping? A. Yes, sir.

Q. Did you find the weight objectionable?

A. To a certain extent, yes, sir.

Q. Where is the larger part of the weight of this Arrott dredger held?

A. On the bowl of the dredger which is suspended.

Q. In other words, the rope or chain supports the main weight of the dredger?

A. Well, it supports about one-half of the weight and you support the other half with your hand. It is not always counterbalanced. It depends on the amount of enamel you have in the bowl of the dredger. Sometimes it will fly way up in the air if you do not hold it, and at other times it has a tendency of going down when you overload it. 3

Q. How long did you say you were at the Standard?

A. About six or seven years, as near as I can remember.

Q. And then you went where?

A. To the United States Sanitary Manufacturing Company at Monaco, Pennsylvania. 4

Q. Were you an enameler all the time that you were at the Standard? A. Yes, sir.

Q. You started with the United States Sanitary Manufacturing Company in 1902?

A. I was not always an enameler at the Standard; I came there as a helper for about six months.

Q. But you were not a foreman? A. No, sir.

Q. Your duties were confined to enameling?

A. Yes, sir.

1 Q. You did not study at that time the powder?

A. No, sir.

Q. When did you start with the United States Sanitary Company?

A. When they began operations; I don't know exactly whether it was exactly 1902 or—

Q. And you stayed with them until you went with the National Sanitary Manufacturing Company? A. Yes, sir.

Q. During all the time you were with the United States Sanitary Manufacturing Company you used the Arrott patent, didn't you? A. Yes, sir.

2 Q. Was that Arrott patent used throughout the factory?

A. Yes, sir.

Q. And when did you leave the United States Company?

A. About three years ago, in 1908, I think.

Q. Have they always used the Arrott patent as far as you know? A. Yes, sir.

Q. Do you know whether that was by contract?

A. No, sir.

Q. You don't know on what terms it was used?

A. No, sir; I never inquired; it was not my business.

Q. You don't know whether a royalty was paid?

3 A. No, sir.

Q. Or whether the shop rights were bought outright?

A. No, sir.

Q. You don't know who handled that end of the business? A. No, sir.

Q. You were promoted to be a foreman of the enameling department at the United States Company after a while?

A. Yes, sir; at the cleaning department—

Q. And that means the polishing out of the tub?

A. No, sir, that means the cleaning out of the casting for the enameling process.

4 Q. You took the tub after it was cast and by the application of emery wheels and a sandblast you polished it and made it ready for the enameling?

A. Yes, sir; I had charge of that.

Q. Did you have charge of the molding room?

A. No, sir; not at the United States Sanitary.

Q. Did you have charge of the mill room at the United States Sanitary Company? A. Yes, sir.

Q. That is the making of the powder? A. Yes, sir.

Q. About how long were you in charge of that?

A. Four or five years, as I remember. 1

Q. Did you start in there as a helper at first?

A. No, sir.

Q. At that time you gave up the enameling end of the shop business, did you?

THE WITNESS: Do you mean the foremanship or what?

Mr. GROSVENOR: Yes.

A. No, I was still foreman.

Q. Then you had charge of these three things?

A. Yes, sir. 2

Q. Who was your superior at this time?

A. Mr. A. E. Arrott and C. F. Arrott.

Q What positions do they hold in the company?

A. President and general manager.

Q. Who was the general manager?

A. A. E. Arrott.

Q. He was the man who ran the factory?

A. He was the man who was manager.

A. At the factory? A. Yes, sir; or of the company.

Q. Where had he been before that?

A. The Standard Manufacturing Company. 3

Q. When you were in the mill room did you have charge of the making of the powder? A. Yes, sir.

Q. Did you determine the composition of the powder?

A. Yes, sir.

Q. And the proportions of the various ingredients which go into the powder? A. Yes, sir.

Q. Had you studied this matter before you went into the mill room? A. Yes, sir.

Q. Where did you study it? A. At home.

Q. You took books on chemistry and the making of glass? 4

A. Yes, sir.

Q. And you gave a great deal of study to it?

A. Yes, sir.

Q. Did you make some changes in the powder after you went into the mill room?

A. Yes, sir; that is a change from the company's powder what the company had used.

Q. You made certain changes in that?

A. I made my mixes which I considered best for the

enameling purposes at that time with the operation, with the air dredger. I do not know what the company's mixes were at that time.

Q. You had been with the United States Company for several years before you went in there, hadn't you?

A. No, sir; I was employed just about a year before I took charge of the mixing room, as near as I can recollect.

Q. For a year, then, you were working for the United States Manufacturing Company in the factory enameling and using the Arrott patent?

A. Partly enameling and partly as foreman.

Q. This was before you went into the mill room?

A. Yes, sir.

Q. You never knew of any other dredger except the Arrott being used at the United States, did you?

A. No, sir.

Q. You say then you made the powder when you went in the mill room?

A. I made my powders, but the company gave me their formula.

Q. And you thought yours the best?

A. Yes, sir; and the company recognized it as being superior to their own.

Q. In what way was it better, more vitreous?

A. Yes, sir.

Q. That is, it was harder?

A. You can call it that; vitreous means porcelaineous, solid body, non-porous; it can be vitreous and not be hard.

Q. Until you went into the mill room of the United States Manufacturing Company you had not taken part in the making of the powders, had you, either at the Standard or at the United States? A. No, sir.

Q. You had not changed the powders in use from time to time, had you? That is, I mean you personally; that was not your duty, was it?

THE WITNESS: At the Standard or the United States?

Mr. GROSVENOR: At the Standard.

A. I had nothing to do with the powders at the Standard.

Q. Nor at the United States until you went into the mill room, is that right? A. Yes, sir.

Q. When you went to the National Manufacturing Company in Indiana, is that right? 1

A. It is not Indiana; the National is in Salem, Ohio.

Q. You became the general superintendent?

A. Yes, sir.

Q. Who are your officers there?

A. F. G. Borden, president; and D. W. Davis, secretary and treasurer.

Q. Do they reside at Salem, Ohio?

A. D. W. Davis resides at Salem; Mr. Borden lives at Grafton, West Virginia.

Q. Are they active in the business? 2

THE WITNESS: In the general business?

Mr. GROSVENOR: Yes.

A. Yes, sir; they are active.

Q. What are the duties of Mr. Davis?

A. He is the secretary and treasurer.

Q. He looks after the selling end of the business?

A. Yes, sir.

Q. And you look after the manufacturing end, is that right? A. Yes, sir.

Q. How old is that company? 3

A. Going on three years.

Q. You went with them at the start, did you?

A. I started them in the operation of making sanitary cast iron porcelain enameled ware.

Q. Do you mean that they opened their factory at that time or that you simply brought this one additional factor into their business?

A. I supervised the building of all the equipment in that factory for the manufacturing of this sanitary enameled iron ware.

Q. Was the National Manufacturing Company in existence prior to that time? 4

A. They were not in existence prior to that time.

Q. Now, what sort of a dredger have you been using at the National Sanitary Manufacturing Company?

A. The pneumatic dredger.

Q. You started with the pneumatic?

A. No, sir; the hand-dredge.

Q. What sort? A. The short-handled.

Q. Like this (indicating)? A. Yes, sir.

1 Q. Supported by any counterweight? A. No, sir.

Q. Did you make any attempt to install this long-handled dredge? A. No, sir.

Q. Or to install any counterweights to support your hand dredge? A. No, sir.

Q. Had you ever seen such a device?

A. Yes, sir; at the Iron City Manufacturing Company's Zelienople works.

Q. Did your men wear the protections at Salem, Ohio, as you described them as being used?

A. Some of them; yes, sir; not any more than what
2 they wear today with the air dredger.

Q. Well, had there been improvements in this short-handled dredge since you used it? A. No, sir.

Q. How long did you use the hand dredge?

A. Not very long; about two weeks; we could not produce salable ware by it and we discarded it.

Q. Where did you get your men from?

A. Well, I picked them up through the country; they applied for positions.

Q. Had any of them worked as enamelers before?

A. Yes, sir.

3 Q. Then, what did you do?

A. We started to experiment on a mechanical dredge, a steam dredge, electric dredge and anything else just to get around the Arrott patent; the reason we did not adopt the Arrott patent at once was because we were afraid of infringing, but we could not get around it successfully—

Q. Whom do you mean by "we?"

A. The National Sanitary Company.

Q. What else did you try besides the short-handled dredge?

A. An electric dredge operated by an electric motor
4 with a little rod and knocker.

Q. About how long did you experiment this way?

A. About two months.

Q. And then what did you do?

A. Adopted the pneumatic dredger.

Q. The Arrott dredger? A. Yes, sir.

Q. Where did you get one? A. Made it.

Q. You made it yourself?

A. Yes, sir; I am perfectly familiar with the construc-

tion of dredges because I made them at the United States plant. 1

Q. Is the output of the National very large?

A. Yes, sir.

Q. It is considered one of the small factories in the trade, is it not? A. No, sir; not so very small.

Q. Did you take part in the negotiations which resulted in the National Sanitary signing a license agreement with Mr. Wayman, one of the defendants in this suit?

Mr. CHRISTY: Objected to as improper cross-examination. 2

A. I don't know of such negotiations; it was not my business to go into the details of that sort; my business was to run the factory and not the executive part of the business.

Q. You did not attend any meetings on behalf of the National Sanitary Manufacturing Company?

A. No, sir.

Q. Anywhere? A. No, sir.

Q. Did you know the matter was being discussed?

A. I heard of it.

Q. When did you hear of it? 3

A. Early in 1910, the early part of 1910.

Q. In May? A. I suppose it was around May or June.

Q. That is after they had signed the contract?

A. Well, I could not say whether it was after the signing of the contract or before the signing of the contract.

Q. Who told you about it?

A. Well, it was discussed in the office of the National Sanitary Company by its officials.

Q. What officials?

A. The president and secretary and treasurer.

Q. After May, 1910, did you make any changes in the character of the dredges which you were using in your factory? 4

A. I made a change for the pneumatic dredger in my enamel mixer.

Q. Did you make the change in the mixer or in the dredger?

A. In the mixing of the enamel for the Arrott dredger.

Q. I thought you said that for two years you were using the Arrott dredger?

1 Q. Yesterday, describing this hand dredge you say: "I held up the dredger with my left hand and supported it with the elbow, and this way of supporting it with my hand here (indicating) it bore down on my wrist and caused it to become very weak in there." That was using the hand dredger without a support, is that right? A. Yes, sir.

Q. That is, without being suspended from the ceiling?

A. Yes, sir.

Q. Have you ever tried using the long or short dredger suspended from the ceiling? A. I tried it, yes, sir.

Q. Which did you try, the long or the short?

2 A. Well, I tried the short-handled.

Q. When did you try the long-handled?

A. I cannot state, but it was in the meantime while I was using this dredge.

Q. When did you use both?

A. I cannot tell that exactly; I gave them a trial.

Q. When did you try the short-handled dredge in that way?

A. I cannot say; it was during the three years that I was using the hand dredge.

Q. It was while you were with the National Company?

3 A. It was while I was with the Standard Manufacturing Company at the Allegheny Works.

Q. It was before the time of the Arrott patent?

A. Yes, sir; I tried it one day.

Q. You tried suspending the short-handled dredge on the weight for one day?

A. I suggested it to the foreman; my wrist was getting too weak and I thought I would have to give the job up, and I suggested one day to the foreman to let me try a suspension, but I could not control it.

Q. When did you try using a suspension on the long-

4 handled dredge?

A. I never tried that; it was suggested to me, but I would not use it.

Q. You never tried it? A. No.

Q. Who suggested it to you? A. The foreman.

Q. Where?

A. At the Standard works, at the Allegheny works.

Q. Before the Arrott patent? A. Yes, sir.

Q. You had heard of the long-handled dredge while you

were at the Allegheny plant? A. I had heard of its being 1
used.

Q. Did any of the enamelers use the long-handled dredge at Allegheny while you were there? A. No, sir.

Q. Did this foreman who asked you to use it have any arrangement to suspend the weight from the ceiling?

A. No, sir; he just heard of it also.

Q. When the Arrott patent was introduced you suspended it from the ceiling? A. Yes, sir.

Q. You say you were present with Mr. Arrott, the inventor of this patent, in making the tests on this dredger?

A. Yes, sir. 2

Q. Were you present when any tests were made with the counterweights?

A. No, sir; that was Mr. Arrott's suggestion; he suggested suspending it. That was the time the enamelers had a sort of grievance because we were going to get our wages reduced, and of course we tried to pick that thing all to pieces, said that it was too heavy and could not be controlled, such as men generally get up when the wages are to be reduced, but there was no ground for any of those complaints.

Q. But as the result of those complaints this counter- 3
weight was thought of? A. Yes, sir.

Q. And that relieved you of a great weight?

A. Of the greater part of the weight.

Q. Of the Arrott dredger? A. Yes, sir.

Q. If you had had a counterweight established on the long-handled dredge would that have relieved you of a greater part of the weight? A. No, sir.

Q. Why not?

A. You would still have supported it under your elbow while the Arrott way you hold it with both hands.

Q. Have you ever tried the long-handled dredge with the 4
counterweights?

A. No, sir, I refused to try it.

Q. Was that after the Arrott dredger?

A. No, when I saw the counterbalance work I would not try it. It took the control away from me. I could not make my full wages.

Q. Let me get at that in another way. I do not think I understand your testimony. When was it that you refused to use the long-handled dredge with the counterweights?

1 A. When the foreman suggested to me that I should try it.

Q. When was that suggestion made? Was it after you were using this counterweight on the Arrott dredger?

A. No, it was after I experimented a day with the short-handled hand dredge to suspend it. I said, I do not care for that; it takes the control out of my hands, and I cannot do the work satisfactorily.

Q. And you refused to try it? A. Yes, sir.

Q. Do you know that the long-handled dredge has been in successful operation in a number of plants throughout
2 the country? A. No, sir.

Q. Have you seen it at the Iron City works?

A. Yes, sir; I seen the enamelers working it; when I was using the Arrott the Iron City offered me employment as mixer, and I seen them using this long-handled dredge. I don't know if it was as long as this one, but I knew that it was longer than the Arrott dredger that we used at Monaca.

Q. And did the men there use these protections that you used?

A. With bathtubs I saw some using masks on their face and asbestos gloves and aprons.

3 Q. When was this?

A. That was the time I was employed with the Arrott, in 1904 or 5; I cannot recall exactly.

Q. But the handle they were using was longer than that on the Arrott dredger?

A. Yes, sir; it looked so to me; of course, I was not way up to the man, but stood 25 or 30 feet away from him and I never thought of that.

Q. After you began using the Arrott dredger did you make any change in the way that you took the tub out of the furnace? Do you understand my question? A. No.

4 Q. Well, you testified yesterday that when you take the tub out it is about what degree under the old method, fifteen or sixteen hundred degrees Fahrenheit? A. Yes, sir.

Q. What temperature does it have when you take it out now?

A. I should judge fourteen or fifteen or sixteen hundred.

Q. Just about the same? A. Just about the same.

Q. If any of the witnesses for the defendants testified that after the introduction of the Arrott patent It was un-

necessary to heat the tubs to the same degree of temperature as before the Arrott patent, would you disagree with him? A. I would disagree with him. 1

Q. Now, you said that with the Arrott patent you applied two coats, is that right? A. Yes, sir.

Q. To all your tubs?

A. Yes, sir; high grade tubs we applied three coats, and also five year guaranteed tubs.

Q. Yesterday you testified that you applied two to all, did you not? A. I may have said so; yes, sir.

Q. Have you had any conversation with Mr. Dawes since you were in this room? A. No, sir. 2

Q. Or with any of the counsel for the defendants?

A. No, sir.

Q. When you used the short-handled dredge you say you applied three coats? A. Three coats; yes, sir.

Q. Then you apply the same number of coats today?

A. No, sir; only on some tubs where it is necessary, such as a five-year guaranteed tub, a six-foot length with five inch roll on it that weights about 450 pounds; and when we want to get a high artistic finish to it; we did not make those tubs at that time.

Q. Yesterday you testified that you made from 12 to 14 tubs in a turn at that time? A. Yes, sir. 3

Q. And you were discounted four or five tubs a day, is that right? A. From three to five tubs a day; yes, sir.

Q. And you were not paid for them? A. No, sir.

Q. You then lost from 25 to 30 per cent. a day?

A. Sometimes that much; I would not get paid for them; they would be B quality tubs.

Q. Do you know Mr. Shield who testified yesterday?

A. No, sir.

Q. He testified that while he was using the long-handled dredge at New Brighton the loss was about 8 per cent.? 4

A. That is in the general production.

Q. In the production of the tubs?

A. I don't know anything about that; I am talking of my experience as an enameler.

Q. If Mr. Shield was producing under the long-handled dredge and losing 8 per cent., and you were using the short-handled dredge with a loss of 25 to 30 per cent., would you draw the inference from that fact that his plan was the more efficient?

1 A. No, sir; I was in too big a hurry; I did not take as great care as the others; I was a reckless enameler, because I was always in a hurry.

Q. Weren't you the best enameler or one of the best there?

A. I was a good one.

Q. This loss of yours was excessive, then? A. Yes, sir.

Q. And didn't the other enamelers have losses too?

A. They did, but theirs were less, and they made less tubs.

Q. They made fewer tubs?

A. Yes, sir; ten or twelve, and exercised more care.

2 Q. Mr. Shield testified that under the Arrott dredger his loss was 2 per cent.; what was your loss at the Standard?

THE WITNESS: As an enameler?

Mr. GROSVENOR: Yes.

A. My loss was cut down to about two tubs a day.

Q. How many did you make?

A. From fourteen to fifteen and as high as sixteen, some days, when I was feeling well. Some days I would not have any bad, if I exercised great care; it all depended on the enameling, as far as the loss went.

3 Q. How many tubs did you try to enamel with the hand dredge suspended by a weight?

THE WITNESS: I, myself, personally?

Mr. GROSVENOR: Yes, at the Standard?

A. I tried about two bathtubs.

Q. You tried about two bathtubs? A. Yes, sir.

Q. And you refused to try any by the long handle?

A. I refused to try any with that suspended operation; I refused to use it because I did not think it could be done successfully.

4 Q. But you refused to try the long-handled dredge?

A. Yes, sir.

Q. Mr. Shield testified that it required a good deal of care and judgment to decide when to take the tub from the furnace?

A. It may in his plant. It depends on the quality of the shell coat and the mixing; in my plant or in the National plant it is different; I am the mixer and I produce the enamel in the proper degree for applying it.

Q. You consider the slush coat a very important matter? 1
A. Yes, sir; very important.
Q. It is considered as of more importance than the other coats? A. No, sir; but just as important.
Q. How do you apply it?
A. Just pour it over and then make it uniform.
Q. Have you made any changes in the ingredients of your slush coat since you were with the United States?
A. Yes, sir.
Q. And while you were with the United States did you make changes?
A. Yes, sir; that is necessary because of the different de- 2
grees of iron that you receive from the foundry.
Q. The iron differs? A. Yes, sir.
Q. And you make different kinds of slush coats from time to time? A. Yes, sir.
Q. Did you analyze the iron?
A. I analyzed the iron for the Cupola.
Q. Did you analyze the iron after it came out of the cupola?
A. No, sir; I keep a certain point of silicate between the iron and the first point and the enamel.
Q. And those are matters which require important study? 3
A. Yes, sir.
Q. They are the most important matters in the business?
A. Yes, sir.
Q. That is the composition of the slush coat and the powder?
A. The composition of the iron alone; the composition of the slush is secondary and also the enamel.
Q. Then the composition of the iron is the most important?
A. Yes, sir; and then comes the slush and the enamel.
Q. Because if the iron is not right you cannot apply the 4
enamel properly?
A. You can apply it but not properly.
Q. Why is it so important?
A. Well, that is my stock in trade.
Q. In fact, that is the chief secret of the business, is it not? A. Yes, sir.
Q. The components of the enameling powder are the same components largely as enter into the making of glass, is not that right?

1 A. Well, no, they are not. There are only very few articles that enter into my mixture that go into the mixture of making glass.

Q. And your mixture is different from what they had at the United States Manufacturing Company?

A. Yes, sir; I did not have the charge of the mixing of the iron at the United States Sanitary; I have that at the National; I am the only authority on that question. What I say about that goes. I have the say as to the iron and the mixtures, and I have the say as to the patterns.

Q. That requires a great amount of care too, does it not?

2 A. Yes, sir; but it is not as important as the other. If the pattern is not right it will expand or contract a certain degree. Then you arrange your slush and your enamel to meet that expansion or contraction and then have a plan by which the enamel can be applied to the metal. If you have a quick device for applying that enamel to the metal while it is in a glowing state you get the best results. If you do not have a quick device for applying that enamel to the iron, then you do not get the amalgamation of the enamel or the slush coat to the iron. If you do not cover that iron very rapidly it kills on you and the atmospheric action

3 will cause a superficial layer of oxide, which is detrimental to the amalgamation.

Q. How long does it take you to apply a coat?

A. We have enamelers who can apply it in a minute or a minute and a half. Some take two minutes. It depends on the enameler's ability, of course.

Q. Respecting this question of the weight of castings, your knowledge of the weight of the castings at the Standard at the time you were there was confined to those observations of the weights at a distance; you testified yesterday that you used to see the weights marked to 275 and sometimes to 285,

4 and then when the air dredger was introduced you saw them going as low as 225 and 235 and 240? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You make heavier tubs than the 285?

A. I testified to a five foot, didn't I?

Q. Are you referring to yesterday's or today's testimony?

A. Yesterday's.

Q. Are you familiar with the character of the output produced by the other manufacturers, or are you just con-

fined to this factory? A. Only from when I see their ware. 1

Q. Where do you see their ware?

A. On the market, in the jobbers' show-rooms.

Q. Do you make a practice of selling the ware, or is that left to Mr. Davis and Mr. Borden?

A. That is left to Mr. Davis and Mr. Borden. I make a practice of visiting the jobbers and looking up what the other people are manufacturing.

Q. Mr. Jobe, will you please produce at the next hearing this correspondence to which you have referred in your testimony between your company and the Standard Sanitary Manufacturing Company respecting the use of the dredger 2 at your place, and which you say you saw?

A. I will ask Mr. Davis for it.

Q. I wish you to bring it, and if you cannot bring it to appear and state on the record why you haven't got it?

A. All right, sir.

Q. Is the formula which governs the preparation of your enameling powder a State secret which you would decline to make known to other manufacturers?

A. I certainly would decline.

Q. And the formula for the making of your slush coat?

A. Yes, sir; I would not tell anybody that. That is my 3 stock in trade. That is the only thing I have got to make my bread and butter on.

Q. And also your various analyses respecting the iron and the experience which you have gained from the study of the iron? Is that a matter which you would decline to reveal to outside manufacturers?

A. That is the most important of all, the iron base. If you have not got that right, the other part is all wrong. I certainly would decline to give that out.

Q. Those are the three things?

A. Yes, sir; those are the three things that are my stock 4 in trade. I would like to do it, but I cannot.

RE-DIRECT EXAMINATION BY MR. CHRISTY:

Q. I suppose when you testified yesterday, Mr. Jobe, as to the essential importance of this automatic dredger you had in mind what you have said this morning as to the importance of your secret mixtures of enamel and slush coats and the iron base? A. Exactly.

1 Q. Then, assuming that you have what you consider to be perfection as regards analyses of your iron, the proper mixture of your slush coat, and the proper mixture of enamel, I understand equipped with all those, nevertheless the testimony which you gave yesterday as to the importance of the automatic dredger is true and correct to the best of your knowledge and belief? A. Yes, sir.

Q. When you testified yesterday that now you only apply two coats of enamel to your tubs instead of three, do you mean tubs of the same grade?

THE WITNESS: As applied with the hand dredge.

2 MR. CHRISTY: Yes.

A. Yes, sir.

Q. You did not mean that to include high grade and guaranteed tubs?

A. I never made any five year tubs or guaranteed tubs at the Standard.

Q. That is by the use of the hand dredge?

A. By the use of the hand dredge; there were other enamelers that made the high grade ware there; there were other enamelers that made a different class of tubs. I made

3 the two year guaranteed.

Q. What was the reason that you declined to use the long-handled suspended dredge?

A. I found it would be harder work for me. I found that I could not control the ones I tried.

Q. What do you mean "to control?"

A. The swinging of it. It was too hard to control the one that I tried.

Q. And you found that out? A. Yes, sir.

Q. When you used the short one? A. Yes, sir.

Q. You said the chief difficulty in the use of the hand

4 dredge was in the rapping? A. Yes, sir.

Q. What did you mean by that?

A The tapping on the handle with the iron rod.

Q. Did enamelers learn that easily?

A. No, sir; they did not; it required pretty good skill to get on to that; it was hard to get the flow of enamel as regularly as it could be done, that is, by hand.

Q. That was difficult?

A. Yes, sir; it was the most difficult—the holding of the dredge was not hard to learn.

Q. That was merely a matter of strength? A. Yes, sir. 1
Q. But the question of skill came in the rapping?
A. Yes, sir.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You say there were other enamelers at the Standard making the high grade tubs? A. Yes, sir.

Q. Doesn't the grading of tubs depend very largely on inspection?

A. The quality does, but not the grade of the tub; the pattern designates the grade; there is the five inch or rolled rim; the flat rim; the round bottom and the two inch bot- 2
tom; the different kinds are the qualities.

Q. Will you give the definition of a high grade tub, a five year guaranteed and a two year guaranteed?

A. The high grade tub is a five year guaranteed tub enameled in the most scientific way, with the most artistic finish we can get on it. It is supposed to be perfectly welded; perfect in every respect, no pin holes; no dirt; no rough spots; it is supposed to be the nearest thing and smoothest to glass you can get. The two year guaranteed tub is just as good in quality only a different design of tub in our fac-
tory. 3

Q. A different design?

A. Yes, sir; a smaller rim or narrower bottom.

Q. One of the witnesses, that is, Mr. Shield, was talking yesterday of five year tubs and high grade tubs as though they were different?

A. You can give them the five year tubs in any design, that is, with that finish, with that enamel.

Q. Did you ever see this price list which is known as Petitioner's Exhibit No. 41?

A. I have seen it in our office; yes, sir.

Q. Did you use it? A. No, sir; it is not for me to use. 4

Q. It is not in your business? A. No, sir.

Q. Mr. Davis might have used it?

A. I don't know; I did not ask him.

Q. You did not help in the making up of this (indicating Petitioner's Exhibit No. 41)? A. No, sir.

Q. Is there anything about high grade tubs in there?

A. I don't know.

Q. Are not high grade and five year guaranteed tubs the same thing? A. No, sir; they are not.

1 Q. Would you ever call the two year guaranteed tubs a high grade tub in the trade?

A. Yes, sir; they call that a high grade tub.

Q. In the trade? A. Yes, sir; in the trade.

Q. You also call a five year guaranteed tub a high grade tub? A. Yes, sir.

Q. Then, do the words "high grade" simply denote the quality in the trade?

A. Yes, sir; it means A No. 1 quality as good as you can make it; that is, in our factory.

2 Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the hearing was adjourned until the following morning, February 17, 1911, at the Federal Building, New York, at 10:30 o'clock.

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3 Mr. GROSVENOR: Counsel for Government understands that we are going on with the hearing tomorrow and Saturday in New York and is also willing to go on next week, with the reservation of one or two days at the end of the week for the argument in Detroit.

Mr. CHRISTY: Very well.

4

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

New York, N. Y., February 17, 1911.

Pursuant to adjournment the taking of the evidence on behalf of the defendants was resumed in the Post Office Building, in New York, N. Y., on the 17th day of February, 1911, at 10:30 o'clock a. m.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General. 3
HERBERT NOBLE, Esq.,
on behalf of the Defendants.

JOHN J. MITCHELL, a witness of competent age, produced on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name?
A. John Joseph Mitchell.
Q. Where do you live? 4
A. 122 Anderson Street, Trenton, New Jersey.
Q. What is your occupation, and by whom are you employed? A. The Mott Company.
Q. In the enameling plant of the J. L. Mott Iron Works?
A. Yes, sir.
Q. That is located at Trenton, is it not? A. Yes, sir.
Q. Are you employed in that plant? A. Yes, sir.
Q. What is your position? A. Foreman.
Q. In what part of the plant?

1 A. The enameling department.

Q. Did you ever do any enameling yourself?

A. Yes, sir.

Q. For how many years were you an enameler?

A. Well, I couldn't exactly say; I judge about fifteen years.

Q. You are now foreman in the enameling department?

A. Yes, sir.

Q. Do you recall a suit between the Standard Company and the Mott Company relating to what is known as the pneumatic dredger? A. Yes, sir.

2 Q. After that suit was terminated will you tell me what kind of a dredger was used in the Mott works?

A. Why, the Ditheridge patent.

Q. What was the shop name, that is the name by which that dredger was commonly known in your shop?

A. Why, the Ditheridge dredger.

Q. The Ditheridge dredger is a pneumatic dredger, is it not? A. Yes, sir.

Q. Previous to adopting the automatic or pneumatic dredger, what kind of a dredge was used in the Mott enameling shop?

3 A. Why, we used two kinds, the banjo—

Q. That was invented by whom?

A. Mr. Lefferts invented that.

Q. And the other kind was the kind that was involved in the Mott suit, wasn't it? A. Yes, sir.

Q. That is, the one involved in the Mott suit was an automatic or air dredger?

A. Well, I don't know the name of it; we did not have it long enough to find out much about it.

Q. When that suit was terminated you stopped using that dredger? A. Yes, sir.

4 Q. Let me ask you some questions about what you call the banjo dredge; was that a hand dredge? A. Yes.

Q. Describe that, as well as you can?

A. Well, some called it a banjo and some a harness; you had a leather shoulder piece here that came around here (indicating).

Q. The leather strap went around the right shoulder and came over the left?

A. Yes, sir; and some put it the opposite way and it went down and was attached to the sieve and there was a handle

there and the strap was fastened under that and there was a part that came across your thigh here (indicating) and your knocker was on a swivel and you kept knocking it all day long, as long as you could. 1

Q. You had a leather harness that went over one shoulder and then around over the other shoulder? A. Yes, sir.

Q. And that helped support the weight? A. Yes, sir.

Q. Then you had a handle that rested against the body right around the groin? A. Yes, sir.

Q. How was the hammer operated?

A. The hammer was operated just like that (indicating).

Q. The hammer was fastened on by a bolt to the handle? 2

A. Yes, sir; it was fastened on to the handle by a bolt and you kept tapping it all day long.

Q. The hammer was fastened to the handle by a bolt through the center of it? A. Yes, sir.

Q. And on one end of that hammer there was a forked piece of iron which went over the handle? A. Yes, sir.

Q. And on the other end there was a piece of iron which came out and you moved that up and down (indicating)?

A. Yes, sir.

Q. And the other end struck the handle? A. Yes, sir.

Q. That is what you call the hand tapping or banjo dredge? A. Yes, sir. 3

Q. Did you ever do any enameling with that dredge?

A. Yes, sir.

Q. For about how many years?

A. I think about—I cannot remember that, but about twelve years.

Q. Did you ever have any experience with the old short-handled hand dredge which you hung under your arm?

A. No.

Q. Or the long-handled hand dredge which was supported by a counterweight and hung under your arm? A. No. 4

Q. All the time you were an enameler and before you adopted the use of the pneumatic dredger you enameled by this banjo or Lefferts' dredge, is that right? A. Yes, sir.

Q. Was there any difficulty in operating that dredge?

THE WITNESS: The banjo dredge?

Mr. NOBLE: Yes.

A. Well, yes, there wasn't more than one man out of fifty who could stand doing it.

Q. Explain what the difficulties were.

A. Well, in the first place the weight carrying was one difficulty; the next difficulty that I found was that it burned the face off of you because you were too close to the ware, and I found that you were all the time blistered here (indicating the groin) and the perspiration ran down and made it sore.

Q. You say the weight down around your groin was so great that it blistered you? A. Yes, sir.

Q. And the perspiration poured down there and made it sore? A. Yes.

Q. What other difficulties were there?

A. I don't understand what you mean.

Q. Was it an easy thing to operate that handle or not?

A. It was easy enough if you could last; it was all right for the first couple of tubs that you made, but after you carried that around a while you got so tired that you were mighty glad when the day was through, and sometimes my hand almost stuck to the handle.

Q. You mean the handle you were hammering with?

A. Yes, sir.

Q. How did the enameling powder come through that sieve?

A. Well, it naturally had to come out in chunks, as a fellow says; if he got tired and had to hammer hard, then it came out in chunks; it never did come out even, but it got worse as you got tired.

Q. It came out in puffs all the time, as I understand you?

A. Yes, sir.

Q. And when you got tired those puffs made the enamel come out still more unevenly? A. Yes, sir.

Q. How close to the tub did you have to stand with that arrangement?

A. Oh, I forget now how long the handle of those banjo sieves were; I could not exactly say.

Q. Four or five feet?

A. I don't think it was five feet; I couldn't exactly say how long it was.

Q. Describe how you operated it while you were enameling the ware; how you had to move it around and so on?

A. Well, you simply held it here (indicating) like this, and this hand kept knocking up and down.

Q. How did you guide it over the surface of the article you were enameling?

A. Guided it with the left hand. 1

Q. And what did you do with the right hand?

A. Tapped with the right hand.

Q. Did you have any help in moving it around with your body?

A. That was the only support you had; you had to move it around with your body because it was strapped to your shoulders.

Q. At the end of a ten hour day will you describe how you or the men's condition usually was that you knew about?

A. I was in a condition that I would be so hot I would be afraid to even go out when I did get out. 2

Q. You got so heated?

A. Yes, I was afraid to go out in the sun.

Q. Were there any times when the men could not finish a full day? A. Yes, some could not.

Q. Some would play out and some would not?

A. Yes, sir.

Q. Did you have any difficulty getting men broken in to using that sieve?

A. Yes, sir; I never broke in any men, but it took me over a year and a half to be broke in right.

Q. Did you see any other men being broken in? 3

A. Yes, sir.

Q. Was there any difficulty getting men to break in?

A. Yes, sir; it was pretty hard; it took quite some time to break that man in.

Q. Could you always break a man in?

Mr. GROSVENOR: I object to that, because the witness has said that he never broke any in.

Q. I will withdraw that; did you ever know of any instances where men had to give it up? A. Yes, sir.

Q. How many instances of that sort? 4

A. They would have to give it up for months at a time. I cannot say if they had to do it altogether; I can mention one man who had to give it up—

Q. Altogether? A. Yes.

Q. Going back now to the question of breaking men in; did you ever know of any men who could not be broken in?

A. Oh, yes.

Q. How many men within your observation and experience did you know of?

1 Mr. GROSVENOR: I think the reason why they could not be broken should be shown more specifically.

Mr. NOBLE: I will ask that question next.

Q. How many men can you recall?

A. I don't know that I could recall a whole lot of men.

Q. Was it a matter of frequent occurrence, though?

A. Yes, if you will let me put it my way: In the first place they could not use the tapper right, and in the second place they would get disgusted with the job and quit.

Q. Why would they get disgusted?

A. Because the work was too laborious.

2 Q. Were there any other reasons why these men could not be taught to be enamelers, if you know, that is, with the old banjo dredge?

Mr. GROSVENOR: I object to that.

A. It was pretty hard to learn; that is the only reason that I can give for it.

Q. Pretty hard to learn?

A. Yes, sir; because it is not every man who can use the banjo dredge.

Q. Did it require skill or judgment, or something of that

3 sort? A. It required brawn and muscle.

Q. In moving the banjo dredge over the article to be enameled did you ever experience any difficulty in guiding it to just the place that you wanted to go?

A. Some men would and some would not; it depended on the man. I could bring it to pretty near any place I wanted it, but others could not.

Q. Could you put the enameling powder on even with the banjo dredge?

A. Well, we had to do the best we could with it.

Q. How did the enameling powder come out?

4 A. In chunks.

Q. In chunks or puffs? A. Or puffs.

Mr. GROSVENOR: Counsel has covered that point once.

Q. Now, compare that with the way that it comes out with the automatic dredger? A. It comes out nice and even.

Mr. GROSVENOR: Which automatic dredger?

Mr. NOBLE: The one put in use after the Mott suit was determined. 1

THE WITNESS: The Ditheridge patent.

Mr. NOBLE: Yes, does it come out evenly that way?

THE WITNESS: Yes, sir.

Q. Was there any difficulty which arose from the fact that the enameling powder dropped on to the article to be enameled in chunks or puffs?

Mr. GROSVENOR: The witness did not use the term "puffs."

Q. Didn't you say "puffs?" A. No, sir; "chunks." 2

Q. Well, was there any difficulty in making the enamel fuse by reason of the fact that it was on that way? Did you have any trouble burning it on?

Mr. GROSVENOR: I object to the question as leading.

Mr. NOBLE: I will withdraw that question.

Q. Tell me which is the better enamel, that which is smooth or that which is put on in these deposits which you have just described? A. That which is put on smooth.

Q. What is the trouble with deposits coming down in chunks or puffs? 3

A. Well, if it is put on in puffs you put it in the fire too often to try to get that down even; consequently the working man loses that tub and also the company loses it.

Q. Describe what you mean by that, the man and the company losing it?

A. Well, the workman don't get paid for that tub.

Q. Why don't the workman get paid for that tub?

A. Because it is bad.

Q. And the company loses it also because it is bad, is that correct? A. Yes, sir.

Q. Suppose you had a tub of that sort and you were to strike it a blow in putting it in the furnace or taking it out, what effect would that have? A. I don't understand you. 4

Q. Suppose a piece of enameled ware where the powder had been put on thicker in some places than in others, due to the powder coming out in chunks or puffs, and you were to put that article into the furnace to heat or fuse it, what would be the effect if you struck it against the side of the furnace or let it down too hard?

A. Well, the powder would fall right off and there would

1 be a mark there that it would be difficult to cover up again.

Q. If it is put on with the automatic dredger which you have used since the determination of the Mott suit, how is it then put on? A. It is on smooth.

Q. Is it put on with equal thickness?

A. Yes, sir; and much better than with the banjo sieve.

Q. Which is the better to put it on, thick or thin?

A. Well, it must be on enough to make it nice and white.

Q. Which is the better, the thick or the thin?

A. The thin is the better.

Q. And is that why you say that the automatic will do

2 better work than the banjo dredge?

Q. Compare the number of losses that you had as a

A. That is one of the reasons; yes, sir.

workman, as an enameler, when you used the banjo dredge and when you used the automatic dredger?

Mr. GROSVENOR: You are speaking always of the Ditheridge in referring to the automatic dredger?

Mr. NOBLE: Yes.

A. Why, the losses are less now than they were then.

Q. What is that due to?

3 A. Well, from my experience it is due to the use of this dredger.

Q. Which do you consider is the better ware, that manufactured by the old hand dredge, known as the banjo dredge, or that manufactured by the Ditheridge or automatic dredger?

A. By the Ditheridge dredger.

Q. The ware manufactured by the Ditheridge automatic dredger? A. Yes, sir.

Q. The men have less losses from bad ware in your shop?

A. Yes, sir.

4 Q. Is the inspection by which you establish whether a piece of enamel ware shall pass or not more severe now than when you had the banjo dredge?

A. Why, it is more severe now, yes.

Q. How many tubs could you turn out by the old banjo dredge in a turn of about ten hours—that is, I mean you or an average good man?

THE WITNESS: That is an average day's work?

Mr. NOBLE: Yes.

A. Well, the crew turned out from ten to twelve tubs and 1
that was considered a pretty good day's work.

Q. By the crew you mean the men working on a furnace?

A. Yes, sir.

Q. After the introduction of the automatic or Ditheridge dredger, how many tubs could a crew turn out or an enameler turn out with his assistants; I mean an average amount?

A. Oh, well, take it at an average, a good man could turn out from 18 to 19.

Q. From 18 to 19; is that also true of other enamel ware that you could turn out a greater amount of enameled ware by the use of the Ditheridge dredger or the air dredger than 2
you could by the old Lefferts' dredge?

THE WITNESS: What kind of ware do you mean?

Mr. NOBLE: The smaller ware.

A. Yes, sir; you could turn out more.

Q. And which would be the better, that made by the old Lefferts' method or by the air method?

A. Well, there was very little small ware made in Lefferts' time.

Q. So you haven't a very good basis of comparison?

A. No, sir. 3

Q. Now, considering the cost, the enameling cost to the company, will you state which is the cheaper for the company, the enameling by the Lefferts' method or the enameling by the air method?

Mr. GROSVENOR: I would like to enter my objection and ask that the question be made more specific. Does that include the cost of the powder, or at the furnace?

Mr. NOBLE: Read the question.

The last question was then read by the stenographer. 4

Mr. NOBLE: I mean to confine my question to the labor cost of the men actually doing the enameling?

A. Why, with the Ditheridge dredger it is cheaper than with the use of the old banjo dredge.

Q. When they used the banjo dredge did they pay piece work to the men? A. Yes.

Q. And do they pay piece work now? A. Yes.

Q. At which time did the men get more money per piece?

A. When they used the old banjo.

Q. When they used the old banjo dredge? A. Yes.

Q. At which time did the men make the most money on a turn, by the Ditheridge or the old banjo method, or by the week, whenever they were paid?

A. Why, they can make more money by the Ditheridge dredger.

Q. Going back to the losses that you said the men had sometimes; what was your experience after you had become a skilled enameler? What was your experience after you became an enameler?

A. Well, my experience was a very sad one sometimes.

Q. What was it?

A. I worked ten hours and got twenty cents sometimes.

Q. Why? A. Because they claimed that it was my fault.

Q. Because of the ware you turned out?

A. Yes, sir, they claimed it was not smooth enough.

Q. After you used the automatic dredger did that same thing happen?

A. I never used the automatic dredger very much.

Q. You have been a foreman? A. Yes, sir.

Q. Well, did the men under you have such instances of loss since you used the automatic dredger? A. No, sir.

Q. Well, when you were using the banjo dredge did the other men have losses? A. Yes, sir.

Q. And what were their losses due to?

A. I cannot say what they got docked for.

Q. But you lost because the ware did not come up to inspection? A. Yes, sir.

Q. How many hours a day do the men work with the Ditheridge dredger? I don't mean right now, but ordinarily?

A. Eight hours.

Q. And in that eight hours, as I understand, they can turn out from 18 to 20 tubs a turn?

Objected to.

A. No, that is a ten hour turn.

Q. Tell me about the condition the men were in when they finished their turn with the Lefferts dredge?

Mr. GROSVENOR: I object to that as it is too general.

Mr. NOBLE: That is, within your observation.

A. Well, as I said before, it all depended on the man; it took a strong, husky man to do it; a weak man had no chance and I don't care how strong he was he came out of there mighty weak. 1

Q. What did you people call the banjo dredge around the shop?

Mr. GROSVENOR: I object to that.

A. The man-killer.

Q. Did you ever hear any complaints of that character from the Ditheridge dredger? A. No, sir.

Q. You have operated the Ditheridge dredger, haven't you? A. Yes, sir. 2

Q. Which is the easier to operate?

A. Why, the Ditheridge dredger, of course.

Q. What are any of the reasons why it is easier?

THE WITNESS: I can give all of the reasons if you want them.

Mr. NOBLE: Yes, I would like to have them all.

A. First, you do not have to carry any weight.

Q. You have it suspended by a counterweight?

A. Yes, sir; next you can stay further away from the heat. 3

Q. Because it has a long handle?

A. Yes, sir; and the third is that you have a steady vibration all the time.

Q. And you can put the powder on smoothly?

A. Yes, sir; and evener.

Q. With the banjo dredge you say you had one hand tapping and the other hand guiding the dredge? A. Yes.

Q. Tell me what you do with the Ditheridge dredger?

A. Take both hands like this (indicating).

Q. In other words, you have both hands to guide the Ditheridge dredger? A. Yes, sir. 4

Q. By which dredge did you use the most enamel powder?

A. Well, I don't know that there would be much difference there; that I could not say.

Q. You haven't had enough experience with the Ditheridge dredger to say about that?

A. Well, what difference there would be would be small, I guess.

1 Q. With which could you get over the article to be enameled more quickly, the banjo dredge or the air dredger?

A. The air dredger.

Q. How many times was it your practice to put back an article to be enameled—that is, put it back into the furnace with the old banjo dredge?

A. Why, on very rare occasions you had to do anything like that after you broke a man in—

Q. You don't understand me: I understand with the Ditheridge dredger you get the enamel on smoothly all over at one time? A. Yes, sir.

2 Q. And you could not do that with the old method?

A. No, sir.

Q. With the use of the air dredger you can get your enamel on with a continuous flowing sheet and get it over quicker than with the old method, is that correct? A. Yes.

Q. Is there an advantage in getting it over quick?

A. Yes.

Q. What is that advantage, what are the advantages?

A. The advantage is the quicker you get your tub enameled the quicker you get it back in the fire and the less heat you lose and you do more work.

3 Q. Is it important at all in point of having the enamel on smooth to get it good and smooth so that it stays on the tub well? Is it important to get it on quickly? A. Yes, sir.

Q. Going back now to the old hand dredge, the enamel came out, you said, in puffs of powder? A. Yes, sir.

Q. And, of course, it fell on the tub in the same way. Did you have, then, the same thickness of enamel everywhere on the tub or not?

A. No, sir; you could not have it uniform in that way.

Q. So that some parts were thicker than others?

A. Yes, sir.

4 Q. What did you do?

A. Roughed it down with the rubbing iron and take it out two or three times and put it back on account of that defect.

Q. You mean you would take it out of the furnace and put it back in the furnace three or four times to relieve that defect? A. Yes, sir.

Q. If the enamel is on thick and thin that way, what would happen if you struck it a blow?

A. Well, if a tub that is enameled thick and a tub that

is enameled thin—the tub that is enameled thin will stand a harder jar than the one enameled thick. 1

Q. If it is thick it will break off quicker? A. Yes, sir.

Q. And when it was on thick and thin did you have any trouble fusing it down in the furnace?

A. Well, you would have to keep it in the furnace long enough to get the thick part down and in doing that the thin part was apt to singe on you.

Q. Do those difficulties which you have described as occurring when you used the old hand banjo dredge—do they occur now with the use of the Ditheridge dredger when you can put the enamel on in a continuous sheet? 2

A. They do occur, but very seldom.

Q. Have you ever broken in any men to the use of the air dredger? A. Yes, sir.

Q. Tell us what your experience was.

THE WITNESS: My experience was this—I don't know what you want to get at.

Mr. NOBLE: Just tell it in your own way.

A. Learning the banjo dredge took me over a year and a half. Now I can take a man of any kind of judgment—I don't care what kind of a greenhorn he is, whether off a freight car or off the street—and learn him how to enamel tubs within a week, inside of a week. I don't mean that I can teach him to judge his heat, but inside of six days I could have him broke in. 3

Q. As far as the question of putting the enamel on is concerned, you can teach him, you say, within a week or six days? A. Yes, sir.

Q. But as far as the judging of the heat was concerned that would take, of course, longer? A. Yes, sir.

Q. How long did it take you to learn the use of the old hand tapper? 4

A. Over a year and a half, and then I did not know it right, but I don't know whether it was my fault or not.

Q. Was that the experience also of the men around you?

A. Yes, sir; as far as I could see.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Mitchell, the chief difficulty, I think you stated, with the banjo dredge was the weight of it, is that right?

A. That was one of them.

Q. Well, you named them in order; you said the weight, and then that you were too near— A. Yes.

Q. And the third you said was that it was difficult to get that steady rapping motion? A. Yes, sir.

Q. The objections, then, to the banjo dredge or the hand dredge were those you have enumerated, those are the chief objections? A. Yes, sir.

Q. When did you first try to suspend the weight of the dredge by a counterweight? Was that when you first got a pneumatic dredger? A. Yes, sir.

Q. And that was the dredger which you used and which was the subject of a suit with the Standard people, is that right? A. Yes, sir.

Q. And after that suit was decided against you then you took up this Ditheridge dredger? A. Yes, sir.

Q. That was also suspended? A. Yes, sir.

Q. But while you had a hand dredge you never tried to suspend the weight, is that right?

A. Not the banjo; no, sir.

Q. I mean by the hand dredge, the banjo dredge?

A. No.

Q. What was the length of that banjo dredge?

A. I really couldn't tell what that was.

Q. Have you got one down at the plant? A. Yes, sir.

Q. Will you bring it in tomorrow?

Mr. NOBLE: He will not be here tomorrow. I will have it here tomorrow if you want to put it in evidence.

Mr. GROSVENOR: I want the banjo dredge that you used at your plant.

THE WITNESS: All right.

Q. Have you ever used the long-handled hand dredge supported by a weight? A. No, sir.

Q. Do you have anything to do with the making of the powder out at the plant?

A. No, sir; nothing whatever.

Q. You don't know what ingredients go into the making?

A. If I did I would have a better job, I guess.

Q. What was that?

A. If I did I would have a better job, I guess.

Q. You consider that, then, one of the essentials in the business?

A. I don't know anything about the making of the powder. 1

Q. But it is important?

A. Yes, sir; if it is not they keep it very secret.

Q. Now, in the twelve years that you were an enameler, you used this banjo dredge entirely throughout that time?

A. Yes, sir.

Q. Were there changes made in the powder from time to time, do you know?

A. No, sir; I don't know anything about the powder.

Q. At times did the powder seem to work more poorly than at other times? A. Yes.

Q. Did you call that to the attention of the powder people? 2

A. Well, no, I never called their attention to it.

Q. That is because they would know if the results of your work were not as good as at other times—the powder people would know it, wouldn't they?

Mr. NOBLE: I object to that question. That is an attempt to have the witness express an opinion as to the quality of the powder, which he has already stated he knew nothing about?

A. I can answer this way: I was supposed to work the enamel, to burn it on, and that is all. Today I am supposed to take charge of the men, and I don't know anything more about the powder than that. 3

Q. Do you know anything about the iron?

A. No, sir; I do not.

Q. That is, the making of the iron?

A. No, sir, I do not.

Q. You don't know anything about the chemical analyses of the iron? A. No, sir, I do not.

Q. Is that a secret too?

A. I don't know; it must be; I don't know anything about it. 4

Q. Do you have anything to do with the making of the slush? A. No, sir.

Q. Do you have charge of the application of the slush, that is, I mean of the men who put the slush coats on the tubs? A. Yes.

Q. The slush is given to you and you have it put on?

A. Yes.

1 Q. Is the tub put into the furnace with the slush coat on dry or wet? A. Dry.

Q. How long does the tub then stay in the furnace?

A. All that a good deal depends on the heat you have in the furnace.

Q. Until the tub gets a certain color, then? A. Yes, sir.

Q. Then, no matter what dredge you use, you have to get your tubs the same color, don't you?

A. Yes, sir, you do. If you do not you get it uneven; if you enamel that thick the richer it is the better looking it is; it will look new enough in this spot (indicating) and
2 if this spot here looks blue and it is not on uniform, then it is not on right.

Q. Then, after you get the tub to a certain heat you take it out and put a coat on? A. Yes, sir.

Q. Do you have these tables there?

A. Yes, sir, turn them by hand.

Q. Did you have them with the hand dredge?

A. Yes, sir.

Q. How long does it take to apply the first coat of powder with the Ditheridge dredger?

A. I could not give an exact answer to that. I should
3 judge it would take about four minutes.

Q. Did you ever time it? A. No, sir.

Q. How long did it take to do it by the hand dredge?

A. I suppose seven or eight minutes, probably.

Q. Did you ever time that?

A. No, but I could tell pretty near the length of time it takes to do it. I would not say the exact time.

Q. Now, I show you Exhibits Nos. 278, 279 and 280 filed by the petitioner; was your banjo dredge as long as this Exhibit No. 279?

A. Oh, no, sir; not the handle was not; no, sir.

4 Q. You notice that this Exhibit No. 279 has a place for the attachment of a hook? A. Yes, sir.

Q. And yours had nothing like that?

A. No, sir; nothing like that. There was a hook like that, but that held to the strap around your neck.

Q. I show you Exhibit No. 278, the short-handled dredge; was your dredge about the length of that?

A. I should judge that the handle would be pretty near that length.

Q. But it had a strap so that the weight was supported around the body? A. Yes, sir. 1

Q. Exhibit No. 280, which is the Arrott dredger, has a place on it for the attachment of a hook; has your Ditheridge dredger a place like this (indicating)? A. Yes, sir.

Q. Then you have a counter-balance, is that right?

A. Yes, sir.

Q. Did you ever try to work with one of these long-handled hand dredges supported by a counterweight?

A. No, sir; I tried to use one of these (indicating) but I could not.

Q. One of the short ones? A. Yes, sir. 2

Q. When did you do that?

A. Oh, many a time I tried it but could not work it.

Q. When? A. About three years ago, I guess.

Q. During the time of the suit?

A. Why, we used the banjo sieve during the time of the suit.

Q. You testified in that other suit, didn't you?

A. Yes, sir.

Q. What turn do your men work that handle this Ditheridge dredger?

THE WITNESS: What turns do they work? 3

Mr. GROSVENOR: Yes, how long.

A. Ten hours; two gangs work ten hours at present and all the rest eight hours.

Q. That is with the Ditheridge dredger? A. Yes, sir.

Q. What time did they work with the old hand dredge?

THE WITNESS: Do you mean down in New Jersey or up in New York? I work them at both places, you know.

Mr. GROSVENOR: Well, this time you have testified about you were working ten hours? 4

A. Yes, sir.

Q. And 12 hours? A. No, sir, not twelve.

Q. But you would work with this hand dredge ten hours at a stretch, would you?

A. Yes, sir; not at a stretch exactly; sometimes we would work over ten hours; it would depend on how you could keep your men togegther.

Q. But your turn was ten hours? A. Yes, ten hours.

1 Q. Do you consider this judgment respecting the time the tub should be in the furnace as important? Let me make that clear: On your direct examination you testified that you could take a man from the streets and teach him to use the dredger in six days, but that you could not teach him to tell when to take the tub out of the furnace. Is that correct?

A. I said I could not teach him to judge the heat in that time.

Q. What do you mean?

A. I couldn't teach him to judge the heat in that time.

2 Q. Is that an important matter? A. Yes, sir.

Q. Why is that important?

A. Because he will burn his enamel if he does not know just how long and if he does not have heat enough it will fall off.

Q. So that is an important matter no matter what kind of a dredge you use? A. Yes.

Q. Do you have anything to do with the sale of your product in the market? A. No, sir.

Q. Have you been over any other factories than your own? A. No, sir.

3 Q. You are not acquainted with any shops where any dredges were used by other people.

Q. Then your testimony is confined entirely to this banjo dredge, which is the only kind you ever tried?

A. Yes, sir.

Q. Since May, 1910, or within the last ten months, have you made any change in the dredger used at your factory?

THE WITNESS: Since last May?

MR. GROSVENOR: Yes.

4 A. Not to my knowledge.

Q. Well, you would know if there had been any?

A. Well, I ought to.

Q. Then can you say that there has or has not been any change? A. I said not to my knowledge.

Q. Has there been any change, then, why do you hesitate?

A. Because I did not see any change. If there has been a change it was unknown to me.

Q. It would be known to you if there was any?

A. Yes.

Q. Then, cannot you answer Yes or No to that question: Has there been any change?

(Witness failed to answer.)

Mr. GROSVENOR: Will you read the question, please?

The stenographer then read the last question.

THE WITNESS: Well, that is the only way I can answer that question.

Q. Can't you answer it Yes or No? A. I cannot.

Q. Has there been any change—don't you understand my question?

A. I understand the question, but that is the only way I can answer that question, that if there was any change made it was unknown to me.

Q. It would be known to you?

Mr. NOBLE: It was unknown to him, he said.

Q. Has there been any change made?

Mr. NOBLE: The witness has answered that question. He said that if there was any change made he did not know of it.

A. If there was, it was unknown to me.

Q. Then there has not been any?

A. Not that I know of.

Q. When did you first begin to use the Ditheridge dredger? A. That I couldn't tell you.

Q. Approximately? A. I don't remember.

Q. Can you say within two years?

A. I don't remember.

Q. Did you ever use the Arrott dredger out at your place?

THE WITNESS: Which dredger is that?

Mr. GROSVENOR: Did you ever hear of that dredger?

THE WITNESS: Is that the one that this suit is about?

Q. Look at this Exhibit No. 280 (indicating); you notice that has a place for the attachment of a hose and it is worked by compressed air and there is a button underneath and the handle is made of iron and is suspended.

1 Q. Or the longer-handled dredge, such as Exhibit No. 279? A. No, sir; I never seen any of them.

Q. How many years did you use the banjo dredge?

A. Let me see—about five years in Trenton—I guess I used it about seven years.

Q. About seven years? A. Six or seven.

Q. Tell me how that dredge was used?

A. Well, it was a motion of the body from the hip; there was a strap around your shoulder.

Q. How did you tap it?

A. With the hand; the handle came up like a brake.

2 Q. And was it pivoted to the side of the dredge?

A. Yes, sir.

Q. And you worked that up and down? A. Yes, sir.

Q. That made the blows which caused the powder to go through the sieve? A. Yes, sir.

Q. Describe how the powder came through that sieve?

A. Well, in standing in a straight position like this (indicating) you held it over the tub and it came out of the sieve in lumps—not even.

Q. In puffs? A. Yes, sir.

Q. As you struck the blow the powder would come

3 down through the sieve?

A. Yes; if you were not very careful it would fall over in lumps.

Q. You mean if you were not very careful it would run over the edge of the sieve? A. Yes.

Q. In addition to that when it came down through the sieve how did it come down?

A. Right through the middle in little lumps or clots.

Q. And as it came through the sieve was it a continuous flow?

A. No, it was just according to the shock the sieve got,

4 like the tick of a clock.

Q. One deposit came out after the other?

A. Yes, sir; just as the blow was struck.

Q. And if you were not careful it would fall off the forward edge of the dredge and get down in the tub?

A. Yes, sir.

Q. Was there any difficulty in getting the powder which came out that way on the article which you were enameling —that is, getting it on smoothly?

A. Yes, sir; if you did not look out for it.

Q. Suppose as you went along in that way it fell in these intermittent puffs, as we will call it—is that a good description of that? A. Yes. 1

Q. You would go around the entire tub that way?

A. Yes, sir.

Q. Would you get the same thickness all over?

A. No, sir; you would not, you might if you were careful, but you could not spend all day at one or two tubs because it would not pay you.

Q. How many tubs could you make every day with the old banjo method? A. It took about an hour to a tub.

Q. Then, in a ten hour day you would make ten tubs? 2

A. Yes, sir; or probably a little more than an hour to a tub.

Q. Did you ever lose any of those tubs on inspection?

A. Yes, sir; on several occasions.

Q. What do you mean by "on several occasions?"

A. Well, they would be crazed or it would fly off, and if that happened you would not get paid for the tub. Or, if it dropped down in the corner you could not use it.

Q. Was the work hard or not with this banjo dredge?

A. I should say it was hard, terribly hard.

Q. Did the heat affect your body in any way? 3

A. Well, part of your body was not two feet away from the tub and as far as your head is concerned, it must have been right into the tub.

Q. And naturally it must have been pretty hot?

A. Yes, sir; your head was into the tub.

Q. What was the color of the tub when you would take it out, that is, the color you would try to get it?

A. It was red, of course.

Q. You try to get them a bright cherry red, don't you?

A. Yes, sir; a little redder than that.

Q. Did you afterwards use what is called the Ditheridge dredger? A. Yes, sir. 4

Q. With the use of which dredge were you able to make the better enameled ware?

A. With the Ditheridge dredger, of course.

Q. How many tubs could you turn out on a turn using the Ditheridge dredger, that is, on a ten hour turn?

A. You could nearly turn out two tubs an hour.

Q. So that in a turn of ten hours you could turn out twenty tubs? A. Yes, sir; from 18 to 20.

1 Q. Were there any difficulties in getting the powder on wherever you wanted it with the old banjo dredge?

A. I told you before that there were.

Q. What were those difficulties?

A. Well, the stuff fell in clots and sometimes if your tub was too long out on the table and was too cold it took too long to burn it on and if you did not rub it on, why, there was a clot would stay on the tub and the tub would be thrown out.

Q. With which dredge could you get over your tub quickest? A. Why, with this Ditheridge dredger, of course.

2 Q. Is there any advantage in being able to get over the tub quickly in making enameled ware?

A. Yes, the hotter the tub and the quicker you get the enamel on, and get it back in the furnace, then the better it will melt; it will melt smoother.

Q. Then, the quickness with which you put the enamel on the tub is an important element?

A. Yes, sir; and so is the heat.

Q. Can you say with which dredge you used the greater amount of enameling powder?

A. Well, I could not exactly say that; because you were 3 not thinking about the powder, but you were thinking about your face or the tub. I thought that I used more powder with the banjo sieve because of the weight on my back, naturally.

By Mr. Grosvenor:

Q. You mean because of the weight on your back you thought it was more?

A. Yes, sir; because it was hung around your neck.

Q. It seemed a lot? A. Yes, sir.

By Mr. Noble:

4

Q. In the use of which dredge did you lose the most tubs? A. With the banjo dredge.

Q. Was the inspection at that time, to pass on the quality or class of the ware more severe during the days that you used the banjo dredge or the Ditheridge dredger?

A. I never knew when you would get paid for the tubs if they were not first class—

Q. Well, I want to know if the inspection is more severe now than it used to be?

A. Yes; about the same—about the same. 1

Q. By the use of which dredge do you make the most money—I don't mean per piece, but by the end of the week? A. You make more money with this dredge.

Q. With the Ditheridge dredger? A. Yes, sir.

Q. But you get less per piece?

A. Yes, sir; and it is easier work and you live longer.

Q. Which was the easier dredge to learn to use, the banjo dredge or the Ditheridge dredger?

A. Why, the Ditheridge dredger.

Q. The easier to learn? A. Yes, sir.

Q. Did you ever see any men have any difficulty using 2
the banjo dredge? A. Yes, sir; I seen plenty of them.

Q. Ever see any men having to quit using it because of the labor and the strain on them?

A. Yes, sir; there were lots of them that could not do it.

Q. Lots of them could not do the work and had to quit?

A. Yes.

Q. Did you ever know anybody who could not use the Ditheridge dredger because it was too hard on them?

A. No, not to my knowledge.

CROSS EXAMINATION BY Mr. GROSVENOR:

3

Q. Mr. O'Brien, have you anything to do with the making of the powder? A. No, sir.

Q. Do you know anything about it? A. Nothing at all.

Q. That branch of the business is beyond you?

A. Beyond me; yes, sir.

Q. How about the making of the tubs, the castings, do you have anything to do with that? A. No, sir.

Q. Who is the head of the factory out there at Trenton?

A. There is a good many; Mr. Bowman, to my knowledge, is superintendent there now.

Q. Well, don't you work out there? A. Yes, sir. 4

Q. Don't you know who the superintendent is?

A. You cannot tell the superintendent of any firm now, very well.

Q. Why is that?

A. Well, Mr. Mott may be the superintendent, you cannot tell.

Q. Who is your immediate superior?

A. Mr. Ditheridge is the immediate superior to me.

Q. What does he do?

1 A. He is the man who holds the secret to that sieve.
Q. What does he do out there?
A. He has the secret of this enamel.
Q. Oh, he has charge of the mixing of the enamel?
A. Yes, sir.
Q. And he is ahead of you?
A. Yes, sir; he is my boss.
Q. Isn't he the boss of Mr. Mitchell?
A. Yes, sir; certainly.
Q. How long has Mr. Ditheridge been there?

THE WITNESS: You mean with the Mott firm?
2 Mr. GROSVENOR: Yes.

A. About eight years, now.
Q. And who is Mr. Ditheridge's boss.
A. Mr. Mott, I think.
Q. Which Mr. Mott? A. Mr. J. L. Mott.
Q. The old man? A. Yes, sir.
Q. Does the Mr. Mott you refer to have charge of all the men in the factory?
A. His name is up in the works, so he must be the boss.
3 Q. Where do you get your pay? A. In the Mott office.
Q. Do you get paid by the day?
A. Yes, sir; but I get it by the week.
Q. And is Mr. Mitchell paid by the day?
A. Yes, sir; every week too.
Q. During the six or seven years that you were using this banjo dredge you made a good many tubs, didn't you?
A. Yes, sir; I had to or I would not be able to live.
Q. Did you ever hear of this long-handled dredge known as Exhibit No. 279? A. No, sir; never seen any.
Q. Did you ever work with a hand dredge the weight
4 of which was suspended from the ceiling? A. No, sir.
Q. The first dredge which you ever worked with that was suspended from the ceiling was this Ditheridge dredger?
A. No, sir; it was the dredger they had the lawsuit on.
Q. That was an automatic dredger, though? A. Yes, sir.
Q. Was the banjo dredge as long as this dredge, Exhibit No. 279? A. No, sir; about half as long.
Q. The chief difficulty with that banjo dredge was the weight, wasn't it? A. Weight and heat combined.
Q. By the heat you mean the nearness to the tub?

A. Yes, sir; your knees were that way (indicating), and the weight brought your head in over the tub. 1

Q. The chief advantage, then, of the Ditheridge dredger is that the weight is—

A. (Interrupting): Is off of you.

Q. And secondly that you are further away?

A. Away from the heat, and it does not affect your side so much.

Q. Because you are not so near it? A. No, sir.

Q. But the Ditheridge dredger is not as long as this Exhibit No. 279?

A. No, sir; you can put yourself a good distance away and your neck is not bent over. 2

Q. By the weight? A. Yes, sir.

Q. Do your men wear any protection while using the Ditheridge dredger? A No, sir; don't need any.

Q. Did they use any when working with the old hand dredge? A. Yes, sir; they used masks.

Q. How many men worked on a tub?

A. There are three now.

Q. Three with the Ditheridge patent? A. Yes.

Q. That is, the chief enameler, the rim man and the table man? A. Yes. 3

Q. How many did you use to have?

A. Two can make a tub if they want to.

Q. That is today?

A. Yes, I have seen four at the dredge, too.

Q. You mean at a banjo dredge? A. Yes.

Q. As a rule with the banjo dredge you had three men?

A. Yes, and four.

Q. As a rule, how many men do you have with the Ditheridge? A. We had two, but now we have three.

Q. You have three now? A. Yes, sir; we did use two.

Q. But you find three is better, do you? A. Well, yes. 4

Q. How many coats do you give a tub? A. Two.

Q. All tubs only have two coats?

A. Well, that is up to yourself.

Q. But the general rule is to give two coats? A. Yes.

Q. Then if when it comes out the second time the inspection shows some defect you put it back?

A. Yes, sir; the enameler has to see that defect or else he don't get paid for it; that is up to the enameler.

Q. Is the deciding just when to take the tub out of the furnace an important matter?

THE WITNESS: The taking of the tub out of the furnace?

Mr. GROSVENOR: Yes.

A. Yes, it is.

Q. I mean the decision as to when the tub is hot enough?

A. Yes, sir; a man has to know when it will melt or not.

Q. That is, if it is too hot it will melt. A. Yes, sir.

Q. You heard Mr. Mitchell's testimony? A. Yes, sir.

Q. He said that was very important? A. Yes, sir.

Q. He said it was harder to learn than how to use the dredger? A. Yes.

Q. You agree with him? A. Yes.

Q. Do you know anything about the selling end of your business? A. No, sir; nothing at all.

Q. Have you been through any other factories? A. No.

Q. Your company has always made good ware, has it not?

A. I guess so; if we did not we did not get paid for it.

Q. That has always been true? A. Yes, sir.

Q. How many furnaces have you at present?

A. We have five.

Q. The enameling end of your business is a small part, is it not, that is, of the tubs?

THE WITNESS: Of the tubs?

Q. The Mott Iron Works make a great many more things than enameled iron ware, don't they?

A. Yes, sir; stable equipments and all that kind of stuff.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Among the advantages of the Ditheridge dredger which Mr. Grosvenor asked you about, he asked you if the chief advantage of the Ditheridge dredger over the old banjo dredge was not the getting rid of the weight and getting further away from the tub. Wasn't there an advantage in being able to get the enamel out in a continuous sheet also? A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. You did not mean in answering his question to shut out the answer to me, did you? 1

Mr. GROSVENOR: Objected to.

A. No.

Q. Now, let us go over that again; what are the advantage of the Ditheridge dredger over the old banjo dredge?

A. Well, the advantage as I seen it, it is easier to put on; it makes a smoother tub and the man gets away quicker and he makes better pay with easier work.

Q. And he makes better ware? A. Yes, sir.

Q. Which is cheaper for his employer? 2

A. Yes, sir; better for himself and better for his employer.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. How much did you make with the hand dredge a day?

A. Some days you might make four dollars or four and a half and some days you might make 50 cents or $2 or $1.25.

Q. How much were you paid per tub?

A. It was piece work.

Q. At how much?

A. There were all kinds of prices; I could tell you 50 different prices. 3

Q. And the turns were ten hours?

A. Well, it was up to you how many hours you worked. They did not care whether you worked or not. You got paid for doing so many tubs.

Q. And you get paid the same way now, that is, by the piece? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

At this point a recess was taken until 2 o'clock.

1 After Recess.

PATRICK MOONEY, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

Mr. NOBLE: I had expected to have two more witnesses here who would have occupied the balance of today and tomorrow. They have not as yet arrived and I do not know whether they will be here tomorrow or not, not having had any excuse for their non-appear-
2 ance or any advices that they will be here later. If they are here tomorrow I shall be glad to go ahead. If not, when we adjourn I should like to adjourn until Monday at the Courthouse in Baltimore.

Mr. GROSVENOR: Counsel for Government agrees to adjourn until tomorrow and thereafter until Monday in accordance with the suggestion of counsel for defendants.

BY Mr. NOBLE:

Q. Now, Mr. Mooney, what is your full name?
3 A. Patrick Mooney.
Q. Where do you reside?
A. 650 Lamberton Street, Trenton, New Jersey.
Q. Where are you employed?
A. By the J. L. Mott Company.
Q. Have you been connected with or are you connected with the enameling department of the J. L. Mott Iron Works? A. Yes, sir.
Q. For how many years have you been connected with that company?
A. Well, I have been with them about twenty-three years.
4 Q. Have you ever been an enameler? A. Yes, sir.
Q. For how many years did you enamel iron ware for that company? A. Twelve years.
Q. Did you use during that time what is known as the banjo or Lefferts dredge? A. Yes, sir.
Q. Did you also use during that time what is known as the Ditheridge dredger? A. Not during that time.
Q. During any time that you were an enameler?
A. Yes, sir.

Q. For how many years did you use the banjo dredge? 1

A. I guess about twelve years.

Q. For how long did you use the air dredger or Ditheridge dredger? A. Three years.

Q. With which dredge could you make the better enameled ware? A. The Ditheridge dredger.

Q. How did you operate the banjo dredge?

A. We had a strap across our shoulder here (indicating) under the right arm and we kept tapping with the right hand.

Q. The tapper was attached to the handle by a bolt?

A. Yes, sir.

Q. How did you guide the dredge? 2

A. By moving our bodies.

Q. And it was strapped to your body and came across your groin? A. Yes, sir.

Q. You used your left hand to guide the dredge and your right hand to tap it? A. Yes, sir.

Q. Now, with the Ditheridge dredge, how did you hold that? A. You have two hands to hold it (indicating).

Q You have two hands to guide the dredge with with the Ditheridge, and one hand with the other? A. Yes, sir.

Q. And the hammering on the Ditheridge dredger is done by a pneumatic hammer? A. Yes, sir. 3

Q. Is the Ditheridge dredger suspended by a counterweight? A. Yes, sir.

Q. How near did you have to go to the tub or the article that you were enameling when you used the banjo dredge?

A. Well, I judge pretty close to it; you had to bend right over it.

Q. So that your face was right close down to the tub or the article you were enameling? A. Yes, sir.

Q. How did the powder come through with the banjo dredge? How was it deposited on the article you were enameling? 4

A. Well, it came out according to the way you rapped.

Q. According to the way you rapped?

A. Yes, sir; it came out in lumps.

Q. You mean it came through in puffs?

A. Yes, sir; one here and one there and so on.

Q. In other words the powder fell down on the tub as each puff came out as you moved the dredge over the surface of the article? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. By which dredge were you able to get the enamel on more smoothly? A. By the Ditheridge dredger.

Q. Did you have any difficulty in getting the enamel on where you wanted it with the banjo dredge? A. Yes, sir.

Q. What were the difficulties?

A. You could not use it very well; you only had one hand to use it and you could not get around in the different corners.

Q. With which dredge did you lose more articles that you had enameled, due to the defects in the enameling?

A. With the banjo dredge.

Q. With the banjo dredge? A. Yes, sir.

Q. Why was the enameling you did with the banjo dredge not so good as with the Ditheridge dredger?

A. Well, it did not come out even all over and smooth; one place would be thick and the other light.

Q. What would the effect be in putting an article which you were enameling back into the furnace if the enameling were thick in one place and thin in another?

A. Well, it would not cover it evenly; it would always leave a rough spot.

Q. And if you were to strike a blow on an article which was uneven, what effect would that have?

A. Well, where it was heavy it would fall off.

Q. Now, compare that with the enamel that you put on with the Ditheridge dredger; why is it you can make a better piece of enameled iron ware with the Ditheridge dredger than with the banjo dredge?

A. Well, you can put it all over even.

Q. Which one can you get over faster with?

A. With the Ditheridge dredger.

Q. How many tubs could you turn out in a turn of ten hours with the banjo dredge? A. I should say from 16 to 18.

Q. With the banjo dredge? A. No, excuse me.

Q. How many with the banjo dredge?

A. From ten to eleven.

Q. And how many could you turn out in the same length of time, I mean a turn of ten hours with the Ditheridge dredger, with the same class of material? A. From 16 to 18.

Q. Could you enamel small ware more rapidly with the Ditheridge dredger than you could with the banjo dredge?

A. Yes, sir.

Q. Tell me as to the smoothness with which you could

get the enamel on on the small ware as compared with the other dredge? A. With the Dtiheridge dredger— 1

Q. You could get it on smoother with the Ditheridge dredger? A. Yes, sir.

Q. Is the fact of getting the enamel on smooth of importance in the manufacture of sanitary enameled iron ware?

A. Yes, sir.

Q. Why is it of importance?

A. Because it makes it look better and you can do more by it.

Q. You can do more by it? A. Yes, sir.

Q. And is the article more durable and less likely to break? A. Yes, sir. 2

Q. Is there any advantage in being able to put the enamel on rapidly? A. Yes, sir.

Q. What is the advantage in that?

A. You can put it on quicker and you get it back in the furnace quicker and so you do not lose so much heat.

Q. In other words, you save your time and the furnace's time? A. Yes, sir.

Q. What is the advantage of having the enamel on sanitary enameled iron ware on evenly? 3

THE WITNESS: Evenly?

MR. NOBLE: Yes, what is the advantage in having it on evenly?

A. It stays there longer.

Q. By which manner could you make the more money?

A. With the Ditheridge dredger.

Q. And with which one were you paid the more per piece?

A. With the banjo.

Q. Tell me about the different amount of labor that you exercised with the two dredges? A. With the banjo dredge—

Q. Well, tell me something about the character of the labor, whether it was severe or otherwise? 4

A. It was laborious work; you had to carry a heavy weight all the time and you kept rapping all the time, and the arm would get stiff with the banjo dredge.

Q. Did the fact that you had to get close to the tub make any difference? A. Yes, sir.

Q. What difference did that make?

A. Well, it would burn your face off and the stomach; you were hot all the time.

1 Q. What effect did that have on the men, on you yourself, when you had to stand up and do this work in this way?

A. The men could not stand it.

Q. Did any men have to quit? A. Yes, sir.

Q. You yourself had to stop?

A. I had to lay off once in a while.

Q. What was your condition as to exhaustion and being tired out at the end of your turn in using a banjo dredge?

A. I was tired out and stiff across here (indicating).

Q. Across your loins, you mean? A. Yes, sir.

Q. Compare that with the way that you feel when you
2 have finished a turn with the Ditheridge dredger?

A. You feel good and you are not as tired.

Q. So that the labor was very much more difficult in the one case than in the other? A. Yes, sir.

Q. Very much harder in the one case than in the other?

A. Yes, sir.

Q. Tell me whether there were any difficulties in learning how to use the banjo dredge?

A. Yes, sir; there is quite a difficulty in learning that; there is not everybody that can learn it. It takes some time to learn that.

3 Q. Did you ever know of anybody that could not learn it?

A. Yes, sir.

Q. Were there many people who could not learn it?

A. Yes, sir; quite a few of them.

Q. Compare that with the difficulty of learning how to use the Ditheridge dredger, the air dredger?

Q. It is quite easy to learn how to use the air dredger.

Q. In other words you do not have to have skilled men to use the Ditheridge dredger, whereas you did have to have skilled men to use the banjo dredge, is that right?

A. Yes, sir.

4 Q. With which dredge did you manufacture the best ware?

A. The Ditheridge dredger.

Q. With which dredge did you lose the most from defective enameling? A. The banjo dredge.

Q. The banjo dredge? A. Yes, sir.

Q. Is the inspection of quality the same now as it was when you used the banjo dredge, or is it not so severe or more severe? A. It is more severe now.

Q. So with a severer inspection you lose less ware?

A. Yes, sir.

Q. And you make better ware? A. Yes, sir. 1

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Do you know anything about the enameling powder?

A. No, sir.

Q. Your duties are those of putting the powder on the tub? A. Yes, sir.

Q. Do you know anything about the slush coat?

A. Yes, sir; I do that.

Q. You put the slush on too? A. Yes, sir.

Q. Do you know anything about the making of the slush?

A. No, sir. 2

Q. Do you know anything about the chemical analysis of the iron used in making the casting? A. No, sir.

Q. Or in making the mold? A. No, sir.

Q. Or the patterns? A. No, sir.

Q. During these twelve years that you have used the banjo dredge you have made a good many good articles?

A. Yes, sir.

Q. And these other men in the enameling establishments also made good ware? A. Yes, sir.

Q. Did you ever try to use this long-handled dredge known as Petitioner's Exhibit No. 279? 3

A. No, sir; I never did.

Q. What was the hardest thing about the use of that old banjo dredge, the weight? A. The weight; yes, sir.

Q. Now, in using this new dredge, this Ditheridge dredger, the chief advantage of that over the other dredge is that you do not have to support the weight; isn't that right?

A. Yes, sir.

Q. And the next chief advantage of the Ditheridge dredger is that you are farther away, isn't that also correct?

A. Yes, sir.

Q. It is also an advantage in the Ditheridge dredge that you do not have to do the tapping with your hand? 4

A. Yes, sir.

Q. But the chief advantage is that you do not have the weight supported around your neck? A. Yes, sir.

Q. Have you ever been in any other factories outside of your own? A. No, sir.

Q. You do not know whether the long-handled dredge is used in some factories supported by a chain?

A. No, sir; I do not.

1 Q. The only hand dredge that you ever used in the Mott factory was this banjo dredge? A. The banjo; yes, sir.

Q. Within the last year have you used any hand dredges at the Mott Works? A. No.

Q. Do you do any of the rim work, that is, the enameling of the rims with the hand dredges?

A. No, I ain't done none of it.

Q. Oh, you are not on the work any more? A. No, sir.

Q. When did you quit enameling?

A. About a year ago this month, I guess.

Q. Until within a year you were, then, enameling?

2 A. Yes, sir.

Q. At that time did you ever use the hand dredge on any articles? A. No.

Q. Not even for pin holes?

Q. Not even for pin holes?

A. Oh yes, might use it for pin holes.

Q. You do have pin holes, then? A. Yes.

Q. Is there not an advantage in using the hand dredge for pin holes that you can get just a little powder out to cover up the pin holes while with the Ditheridge or the automatic dredger you get more powder than you want on

3 the pin holes? Is not that true? A. Yes, sir.

Q. You say you did make more tubs using the Ditheridge dredger than in using the banjo? A. Yes, sir.

Q. Per hour per turn? A. Yes, sir.

Q. And a large part of that saving was due to the fact that you did not have to carry the dredge any longer?

A. Yes, sir; and the rapping.

Q. And a large part of your strength was saved because you were not so near the tubs, isn't that right? A. Yes, sir.

Q. Is it not a fact that the rough spots are sometimes caused by trouble in the casting?

4 A. No, sir; I don't know, sir; by the enamel falling off—it is on too heavy and it falls off and you cannot put it on again.

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. These advantages which Mr. Grosvenor has asked you about as to the weight and the getting further away from the tub, and so on, do not change your answer that you can make better ware and get your enamel on better by the use of the automatic dredger, do they?

THE WITNESS: Sir, I do not quite understand you. 1
Mr. NOBLE: Will you read the question?
The stenographer then read the last question.

A. You can get the enamel on better by the Ditheridge dredger.

Q. You can get your enamel on better? A. Yes, sir.

Q. And make better enameled ware? A. Yes, sir.

Q. I forgot to ask you whether or not the advantage of the air dredger is not the fact that you can get the enamel on in a continuous flow so that it is even all over?

A. Yes, sir; you can get it on with a continuous flow and it is even all over. 2

Q. You can get that with the Ditheridge dredger?

A. Yes, sir.

Q. But you cannot get that with the banjo dredge?

A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ANTHONY BARRY, a witness of competent age, produced 3 on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Where are you employed?

A. The J. L. Mott Company.

Q. What is your address?

A. 606 Liberty Street, Trenton, New Jersey.

Q. Are you employed in the enameling department of the J. L. Mott Company? A. Yes, sir.

Q. Are you in the enameling department? A. Yes, sir. 4

Q. How many years have you been with them in the enameling department? A. About seven years.

Q. Are you engaged in enameling now? A. Yes, sir.

Q. What kind of a dredge do you use?

A. I use a Ditheridge dredger now.

Q. Have you been using that for several years?

A. Yes, sir.

Q. Did you ever try to learn to use the old banjo dredge?

A. Yes, sir.

1 Q. What success did you have? A. I could not do it, sir.

Q. Why not? A. I failed.

Q. Why?

A. I was not able to carry it; I could not work with it. A couple of hours used to play me out. I was not strong enough for it.

Q. Do you have any difficulty in using the Ditheridge dredger? A. No, sir.

Q. Do you enamel bathtubs? A. Yes, sir.

Q. How many tubs can you turn out in eight hours?

A. Sixteen.

2 Q. Two an hour? A. Yes, sir.

Q. That is high grade tubs? A. Yes, sir.

Q. Were you around when enamelers were using the old banjo dredge? A. Yes, sir.

Q. Do you remember how many the men could turn out of that same class? A. Yes, sir.

Q. How many could they turn out in a turn of ten hours?

A. Oh, ten to twelve tubs; that is the most I ever saw turned out.

CROSS EXAMINATION BY Mr. GROSVENOR:

3 Q. You say you could not support the weight of the old banjo dredge? A. No, sir.

Q. That had to be carried from your shoulder?

A. Yes, sir.

Q. Then the great advantage of this new dredger is that the dredge is held up by a chain?

A. Yes, sir; and there is no weight at all to carry.

Q. And the reason you could do more work is because there was no weight to carry?

A. No weight at all to carry and you can use it twice as fast.

4 Q. And you are further away? A. Yes, sir.

Q. In trying to learn the banjo dredge the chief difficulties were first the weight being on you— A. Yes, sir.

Q. Second, you are too near it?

A. Yes, sir; couldn't stand the heat.

Q. Did you have any difficulty learning the tapping motion? A. Yes, sir; I could not tap it at all.

Q. Those are the three objections? A. Yes, sir.

Q. When was it that you tried to learn to use the banjo dredge?

A. Right after I started in to work up there, about seven years ago. 1

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. Can you get your enamel on smoothly and evenly with the Ditheridge dredger? A. Yes, sir.

Q. Is the inspection for defective ware greater or less in the Mott Works than it was when you commenced?

A. Oh, it is just about the same now, sir; they are just as strict now.

Q. They are just as strict now? A. Yes, sir.

Q. I forgot to ask you how many tubs you could make in a turn with the Ditheridge dredger? 2

A. I work ten hours and I can turn out from 18 to 20, sometimes 22; it depends on the heat that I have in the fire.

Q. Did you ever know of any other men besides yourself who had difficulty in learning to use the banjo dredge?

A. Oh, yes, sir.

Q. What were their difficulties?

A. Just the same as myself; they could not use them.

Q. Did you ever know any of those men who had any difficulty learning the Ditheridge dredge? A. No, sir.

Q. You have seen new men come in and learn how to use the Ditheridge dredger? A. Yes, sir; inside of a week. 3

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. Did you ever try to use a long-handled dredge where the weight was suspended above like Exhibit No. 279?

A. No, sir.

Q. And which enabled you to stand further away from the tub? A. No, sir.

Q. Do you know anything about the making of the powder? A. No, sir.

Q. Why do you laugh? 4

A. Because if I did I would not want anything more, if I knew how to do that.

Q. You mean you would get a good deal more wages?

A. Yes, sir; there is a patent on that.

Q. It is a secret? A. Yes, sir.

Q. And the men who make it get good wages, I suppose?

A. I guess they do; they get more than I do, any way.

Q. I suppose you don't know anything about the molding either, do you? A. No, sir.

1 Q. Is that more difficult too?

A. No, sir; I couldn't tell you anything about the molding.

Q. Or the making of the iron? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the hearing was adjourned until Monday, February 20, 1911, at the Post Office Building, in Baltimore, Maryland.

2

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

v.

3

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

Baltimore, Maryland, February 20, 1911.

Pursuant to adjournment, the taking of the evidence on behalf of the Defendants was resumed this twentieth day
4 of February, 1911, at the Post Office Building, Baltimore, Maryland.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
CARROLL T. BOND, Esq.,
on behalf of the Defendants.

CHARLES A. FISHER, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Mr. Fisher, what is your full name?

A. Charles A. Fisher.

Q. Where do you reside? A. 3910 East Pratt Street.

Q. Baltimore? A. Baltimore county.

Q. Where are you employed?

A. A Weiskittel & Son Company's enamel works.

Q. Have you ever been engaged yourself in making enamel ware? A. Yes, sir, I have. 2

Q. What is your position now with A. Weiskittel & Son Company? A. Foreman.

Q. For how many years have you been with A. Weiskittel & Son Company?

A. With the company—do you mean in the enameling business?

Mr. NOBLE: In the enameling business.

A. I have been there practically ever since the plant has been out there; that has been 13 years, I think. 3

Q. Have you ever worked as an enameler in any other work? A. No, sir; I have not.

Q. How long have you been foreman?

A. About eight or nine years.

Q. Did you ever use what is known as the hand dredge in the manufacture of sanitary enameled iron ware?

A. Yes, sir; the hand dredge I have used.

Q. Have you ever used the Arrott or pneumatic air dredger? A. Yes, sir.

Q. Will you describe the kind of dredges you used?

A. One on small ware and one on bathtubs. 4

Q. Describe both of them?

A. The one used on small ware we held in our hands that way (indicating).

Q. The one used on small ware was a long-handled or a short-handled dredge? A. A handle about 3 foot 6 long.

Q. And the one that you used on large ware was the one known as the long-handled dredge?

A. The long-handled dredge; yes, sir.

Q. How long was the handle on that? A. Eight feet.

1 Q. Was that supported in any way?

A. Yes, sir; it was suspended with a chain.

Q. With a sort of counterweight? A. Yes, sir.

Q. Will you describe first the short-handled hand dredge and how it was used?

A. You held it in the left hand like that (indicating) and you held it under your arm.

Q. Under your elbow?

A. Yes, sir; and you used eight or ten pounds of powder in there and you held a beater in the right hand and beat it backwards and forwards all the time you

2 worked.

Q. The short-handled dredge you held in your left hand and supported it under the elbow?

A. Yes, sir; just as you see it there.

Q. And with the right hand you beat on the handle?

A. Yes, sir.

Q. Had an instrument that struck— A. On both sides.

Q. As the instrument went up and down? A. Yes, sir.

Q. How many pounds of powder did you have in the sieve? A. Between six and ten pounds.

Q. Did you have any difficulty with the use of that

3 dredge?

A. Yes, sir; often it caught me in the wrist here (indicating) my wrist would give away and it would knock me, and often it would spoil a piece of ware.

Q. Did you suffer any inconvenience from hammering with your other hand? A. Yes, sir.

Q. What was that? A. The strain.

Q. The strain on the wrist? A. Yes, sir.

Q. With the manipulation of that short-handled dredge did you have any difficulty in putting the powder just where you wanted to deposit it?

4 A. We could not put the powder just where we wanted it, because the beat was irregular.

Q. Did that have any effect with respect to the amount of powder put on in different places?

A. Yes, sir; it would cause it to come down in grooves or waves; often Mr. Weiskittel came in and he would say to me, Charlie—

Mr. GROSVENOR: I object to that. I object to anything that Mr. Weiskittel said to him.

Q. Was that with reference to this ware you were making? 1

A. Yes, sir; he would say, you are not at Atlantic City; that looks like it is seasick. That was caused by that beat.

Mr. GROSVENOR: I object to that.

Q. Was this comment which Mr. Weiskittel made to you a criticism upon the ware you were making? A. Yes, sir.

Q. Was it a correct criticism?

A. To the best of my knowledge it was, because the ware was rough.

Q. Was the ware which you made and which you are now talking about in fact wavy? A. Yes, sir. 2

Q. The enamel on it in some places was thick and in some places thin? A. Yes, sir; it was uneven.

Q. You used this short-handled dredge, then, if I understand you, on small ware? A. Yes, sir.

Q. What do you mean by small ware?

A. Such as lavatories and sinks and backs and such ware as that.

Q. On what kind of ware did you use what you called the long-handled hand dredge? A. On bathtubs.

Q. Will you describe the way in which you used that? 3

A. That dredge was suspended, the hand dredge, that is—

Q. The hand dredge?

A. Yes, that was suspended by a chain to a place on the handle about 18 inches from the dredge and we would hold the dredge against our side here (indicating).

Q. The handle of the dredge you held against your side?

A. Yes, sir; held it against the side and beat with this hand (indicating).

Q. Did you have any trouble in the use of that hand-dredge in point of weight or in point of labor? 4

A. We had no trouble with the weight, but it was the labor; we had trouble controlling that dredge with one hand.

Q. With the hand which you held that dredge you had to guide it? A. Yes, sir; had to guide it.

Q. Did you have any difficulty depositing the enameling powder on the bathtubs with the use of that dredge?

A. Yes, sir.

Q. Describe what those difficulties were.

1 A. In swinging this dredge backwards and forwards, if you notice, it goes around and forms a circle, and we threw more powder on both ends than in the center, and there was always a place in the middle of the side that we did not get the amount on that we should.

Q. Then the powder was thick on the ends of the tub?

A. Yes, sir.

Q. And thin in the center? A. Yes, sir.

Q. Did that apply to the entire tub? A. Yes, sir.

Q. To the sides and bottom?

A. Yes, sir; it was always rough, because you could not
2 get that regular beat; often a man's arm would play out on him. My arm has played out when I have been half through with a tub.

Q. Did that have any effect on the manufacture of that tub? A. Yes, sir.

Q. What was the effect?

A. The tub cooled off because we were not able to put the enamel on there quick enough for the tub to take it; then the enamel would fall off when we put it in the furnace.

Q. What did the effect of striking the handle have on
3 the manner in which the powder came out?

A. It packed the powder in the dredge.

Q. And how did the powder come out of the dredge and fall on the tub?

A. It would generally come out more around the circle and not in the center.

Q. Did the powder come out in a continuous flow or in beats? A. In beats.

Q. What effect did that have on the tub as to making it even? A. It was impossible to get it on there even.

Q. Did that have any effect on the quality of the ware
4 that you were enameling? A. Yes, sir.

Q. What was the effect?

A. The firm had to sell such tubs as seconds.

Q. Is it any advantage to get the powder on the tub smoothly? A. Yes, sir.

Q. What advantage?

A. When we get it on smoothly it melts down nicely and makes a first class tub and we get it on there thinner, and naturally it will stand the expansion and contraction of the tub better as you throw hot or cold water in it.

Q. You spoke of seconds and firsts? A. Yes, sir. 1

Q. What do you mean by that?

A. A tubs are tubs that we can send out as first class tubs.

Q. That is A tubs? A. Yes, sir.

Q. And what is the next class of tubs? A. Seconds?

Q. Or B tubs? A. Yes, sir.

Q. Did you manufacture tubs for any length of time?

A. Well, I myself have not made many of them; I have worked at them time and again, but I am right there in the shop seeing them made and instructing the men every day. 2

Q. Now, when they used the hand dredge in the manufacture of tubs, how many hours did the men work on a turn? A. Worked eight hours.

Q. Will you tell me your best recollection of the number of tubs on an average that the men were able to get of A class and the number that they were able to get of B class when you used the hand dredge?

A. Well, I could base it on about 5 per cent. of A tubs and 95 per cent. of B.

Q. Now, when was the air dredger introduced into the Weiskittel works? A. Along about June 1st, 1910. 3

Q. 1910; now, give me your best recollection of the number of tubs which the same men were able to turn out of the class A and class B in a turn in percentage, if you can do it that way?

A. About 75 per cent. of A's and 25 per cent of B's.

Q. Will you tell me whether the men were able to stand the work easily when they used the hand dredge or not?

A. I have often had to go there to help them out myself; they would stop. They would be unable to finish the tub and my assistant has helped them too.

Q. What was the reason? 4

A. Their arms would give away on them.

Q. From the labor of beating the handle? A. Yes, sir.

Q. Were the men obliged to lay off or could they always finish their turns? A. No, sir.

Q. Was it a matter of frequent or infrequent occurrence that the men had to stop on their turns?

A. It was a frequent occurrence.

Q. What is your best recollection of the number of tubs

1 which men could turn out by using the hand dredge in a turn of eight hours?

THE WITNESS: Using the hand dredge?

MR. NOBLE: Yes, the hand dredge; tell me the average number they turned out?

A. Between 11 and 12.

Q. And of those, I understood you to say, they would get about 5 per cent. of A tubs and 95 per cent. of B tubs?

A. Yes, sir.

Q. About how many tubs on an average were those
2 same men able to turn out using the air or Arrott dredger?

A. Well, on an average of—

Q. I mean the same turn of eight hours?

A. From 14 to 16 tubs—I would say—or make it 13 to 16.

Q. Of the 13 to 16 tubs which they turned out using the air dredger, I understood you to say they would get about 75 per cent. of A class and 25 per cent. B class, is that correct? A. Yes, sir.

Q. What is the difference between the A class tub and the B class?

3 A. An A class tub is a tub that has a much smoother finish, the enamel is put on more evenly and it is more durable; that is to my estimation it will stand more.

Q. You said something a while ago about the powder falling off and falling down in rolls when they used the hand dredger; explain more fully what you mean?

A. In swinging the dredge backward and forward you get what we call lumps; when a man shoves his fork in there to take that tub up to put it back in the furnace, the least little jar jars that powder down into rolls and that melts there and makes a lump in the corner and where
4 it drops from it leaves dents; the powder drops out and leaves dents.

Q. With which dredge, the hand dredge or the air or Arrott dredger can you get over the surface of the article you are enameling more speedily? A. The air dredger.

Q. Is that any advantage? A. Yes, sir.

Q. What advantage is that?

A. You can get the enamel on there much quicker while the enamel is hot, and it fuses to the iron much better and we get it back in the furnace before it is cooled off.

Q. What is the color of the tub when you take it out of the furnace to enamel it? A. A very light cherry red.

Q. You say it is an advantage to get the enamel on there while the tub is hot? A. Yes, sir.

Q. Why is it an advantage?

A. Because it melts quicker and you get it on before the iron is cold; that is provided that you get the enamel on while it is hot, and it is submitted to the point that it will melt there.

Q. And when the irons show up that shape up and both the enamel that shows is melted? A. Yes, sir.

Q. What is the advantage of putting the enamel on thin and smooth?

A. You get it on more even and as I stated before, I consider it better; it would stand more, because it would resist the expansion and contraction of the casting better than if it was on heavy.

Q. Suppose a tub or enameled article which had the enamel on thick in one place and thin in another would get a blow, what would be the effect of that blow?

A. If you take and give a piece of casting with a heavy coat of enamel on it a blow it is very apt to fly off.

Q. The enamel is apt to fly off? A. Yes, sir; very often.

Q. And if it is thin, what would be the effect of that same blow? A. It is not apt to hurt it.

Q. Was there any difference in the way you had to handle the castings in putting them in or taking them out of the furnace in using the hand dredge or the Arrott dredge? A. No difference; the same system.

Q. Did you have to use any more care?

A. We had to exercise more care under what we called the hand dredge.

Q. Why?

A. Because, as I stated, we did not get the powder on until and it did not fuse to the iron as it should and we had to be very careful to take it up it have the enamel burst, while with the air dredge we could get it on the iron while it is hot and get it back in the furnace much quicker.

Q. Can you say whether or not in using the pneumatic or air dredger, that is the Arrott dredger, whether the powder fuses on the iron before you have to put it back in the tub or not?

THE WITNESS: In the furnace, you mean?
MR. NOYES: Yes.

A. Yes, sir.
Q. Then it becomes very easy to put it on quicker?
A. That is because you can put it on quicker.
Q. And because you can put it on it keeps hotter?
A. Yes, sir; it will hold its heat; it is the difference of half the time to putting the charge on.
Q. Now, how do you work that; can you give it without the use of the Arrott dredger as quickly as you can with the Arrott dredger, when you take it out of the furnace, is of the same heat?
A. It will take one-third longer to put it on with the hand dredge than it will with the air dredger.
Q. How do you heat your furnaces at the Weiskittel plant? A. With coal.
Q. You do not have any natural gas here? A. No, sir.
Q. Have you changed the weight of your castings or patterns since you introduced the Arrott dredger in the Weiskittel works? A. No, sir.
Q. Will you tell me whether or not the castings could be made lighter since you use the Arrott dredger if you saw fit to change your patterns?
A. Yes, sir; they could be made lighter.
Q. Why could they be made lighter?
A. Because we get the enamel on much faster.
Q. And it still retains the heat?
A. And still retain the heat.
Q. How many men have you on a furnace?
A. Three on a furnace.
Q. One is the engineer?
A. One is what we claim as head man, and the second and third men; the head man does the dumping on the handle of the ladle, and the second man does the lighting and dumping, and the third man lives the furnace and turns the table.
Q. The duty of the third man is to live the furnace and turn the table? A. Yes, sir.

Q. If you were to introduce an air table in turn the [illegible] with, could you dispense with the services of one man?

A. Well, providing we were running three or four turns we could take one man in for the furnaces.

Q. In other words, the machine with you would be that you had to have some hand, as a fireman?

A. That is the idea.

Q. That is why you keep three men on a dredge?

A. Yes, sir.

Q. Are the furnaces I showed to you? A. Yes, sir.

Q. [illegible] A. Yes, sir.

Q. [illegible] A. Yes, sir; I have.

Q. Were those men whom you had use the hand dredge in your recent experiments men who previous to the first of June had been accustomed to using the hand dredge?

A. Yes, sir.

Q. Had they been in the employ of Weiskittel & Company for a number of years? A. Yes, sir.

Q. And were experienced enamelers?

A. Experienced enamelers.

Q. Will you please tell me the result of their use of the hand dredge in these recent experiments?

A. Well, they all complained to me about it; they asked me to please give them the air again; they said it would be impossible for them to hold out if we did not give them the air again.

Q. Were there any differences in the qualities of ware which they made in those experiments? A. Yes, sir.

Q. What was the difference?

A. The loss of ware and seconds.

Q. As I understand you, the same men made a great many more seconds by the use of their hand dredges during those experiments than they had been making while they were using the air dredge; is that correct?

A. Yes, sir.

Q. Now, did you use the same mixture of enamel in those experiments that you have recently been making that you used and have been using since the introduction of the air dredges? A. Precisely the same.

Q. Will you tell me whether there has been any difference in the Weiskittel works in the cast iron that you

ameling since the introduction of the Arrott dredger, he cast iron which you used before, when you had the dredge?

Mr. GROSVENOR: I don't think this witness has testified that he had any knowledge of the cast iron business.

There have been no changes made in the iron at all. That is within your knowledge, is it? A. Yes, sir. Now, during the period of these experiments with nd dredge which you have recently been making, did se interchangeably the same castings when you were ng with the air dredger and when you were dredging he hand dredge? A. Precisely the same castings. What is the difference, Mr. Fisher, in your opinion, quality of the enameled ware which you are able to with the Arrott dredger and the hand dredge?

THE WITNESS: What is the difference in the quality, did you say?

Mr. NOBLE: Yes, in the quality.

Well, the air dredger makes a superior piece of ware other dredge, and without it we could not make the hat we are making with the other dredge.

Have you changed the size of the mesh since you in- ed the air dredger in your works? A. Yes, sir.

What change has been made?

From 30 to 40 and 50.

That is, when you used the hand dredge you had a sh? A. A No. 30.

And with the use of the Arrott dredger you have a l 50 mesh? A. Yes, sir.

With which dredge can you use a finer enamel; with nd dredge or the Arrott dredger?

A finer enamel—

Mr. NOBLE: Yes, with which dredge can you use the finer powder?

THE WITNESS: The finer powder or finer gauze?

Mr. NOBLE: Why, the finer gauze?

With the air dredger.

Why?

Because with the hand dredge it beats it down, while

with the air dredger it is a vibrator and it keeps the powder dropping over the bottom of the tub that way (indicating), just as with a grater. 1

Q. How does the powder come out when you use the air dredger? A. It comes out regularly.

Q. In a continuous flow? A. Continuous flow.

Q. With the air dredger you get a continuous flow and with the hand dredge you get— A. Jars.

Q. So that the powder comes out in puffs? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Can you get enamel which is put on with the hand dredge on a casting off more easily or less easily than you can enamel which is put on the same kind of casting under the same conditions with the air dredger? 2

A. In my experience we can get off that which is put on with the hand dredge easily.

Q. That which is put on with the air dredger adheres more closely? A. Yes, sir.

Q. It stays on better? A. Yes, sir.

Q. I understood you to say that sometimes in the use of the hand dredge that the iron would cool before you could get the enamel on? A. Yes, sir.

Q. Is that correct? A. Yes, sir. 3

Q. Did that cause your company to lose that piece of enameled ware?

A. It causes them to lose that enamel that went on that tub.

Q. In other words, you had to chip that off?

A. Yes, sir.

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, do the enamelers make the most money? A. With the air dredger.

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, are you able to get the most use out of the furnace? A. With the air dredger. 4

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, are you able to use the least enamel? A. With the air dredger.

Q. With which dredge, the hand dredge or the air dredger did the men have freest use of their hands?

A. With the air dredger.

Q. With the hand dredge they only had one hand to guide with? A. Yes, sir.

1 Q. And with the air dredger they have both hands to guide with, is that correct? A. Yes, sir.

Q. With what kind of heating material can you get a hotter furnace, natural gas or coal?

A. You can get a more regular heat from gas than you can from coal.

Q. Is what you have said about the quality of the ware as to bathtubs and the greater speed with which they can be manufactured and so on, true of small ware?

A. Yes, sir.

Q. So that if I understand you, the enameler can make
2 better wages for himself, better ware for his employer, more pieces of ware for his employer, with the air dredger than he can with the hand dredge; is that correct?

Mr. GROSVENOR: I object to that as leading.

A. Yes, sir.

Q. Have I correctly stated your testimony, then, in that question? A. Yes, sir.

Q. Which is the easier work upon the man?

A. The air dredger.

Q. Can you give any relative statements of the dif-
3 ference from your experience and observation?

A. Yes, sir; the man with the hand dredge has to stand there and beat it, as I stated before, beat it with his hand, while with the air dredger he just stands there and holds it and works it with a valve.

Q. With the air dredger you get a sort of circular motion? A. Yes, sir.

Q. Can you do that with the hand dredge? A. No, sir.

Q. Is that an advantage with the air dredger?

A. It is an advantage over the hand dredge.

Q. How is that an advantage?

4 A. Because you have both hands to control the dredge with.

Q. And that is due to the fact that you can use both hands? A. Yes, sir.

Q. Which is possible when using the air dredger but not when using the hand dredge? A. Yes, sir.

Q. I am going to ask you some questions which were asked the other day by counsel for the Government of a witness; do you know Mr. George Shield? A. Yes, sir.

Q. Of the Dawes & Myler Works of the Standard Company? A. Yes, sir. 1

Q. Mr. Grosvenor asked Mr. Shield this question: "Now, this air dredger is a useful tool, is it not, in the manufacture of sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked this question: "And it is a valuable tool in the manufacture of Sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked: "Is it an essential tool? You understand the difference?" What would be your answer?

A. It is. 2

Q. It is essential? A. Yes, sir.

Q. He also said: "Is it absolutely necessary for you to have that Arrott dredger in order to make sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked: "It is necessary?" What would be your answer to that question?

A. It is necessary to turn out first class goods.

Q. Now, Mr. Fisher, I show you Petitioner's Exhibit No. 278 and ask you what it is?

A. That is what we call a hand dredge. 3

Q. That is what we called here in the testimony a short-handled hand dredge? A. Yes, sir.

Q. The dredge you have spoken of was similar to that dredge? A. Yes, sir.

By Mr. Grosvenor:

Q. That is the short dredge used on small ware?

A. On small ware; yes, sir.

By Mr. Noble:

Q. Now, I show you Petitioner's Exhibit No. 279, and ask you if that is what you have referred to in your testimony as the long-handled hand dredge? 4

A. That is the long-handled hand dredge; yes, sir.

Q. I now show you Petitioner's Exhibit No. 280 and ask you if that is what you have referred to as the Arrott or air dredger? A. That is one of them.

Q. Now, on Exhibit No. 279 I call your attention to a piece of iron fastened on the handle about 18 inches from the sieve itself; I ask you if it was about that place that

1 the hand dredges that you used in the Weiskittel works were suspended by a chain? A. Yes, sir.

Q. I also call your attention to a similar iron clamp on Exhibit No. 280, being the Arrott dredger, and ask you if that is similar to the supports which you have in the Weiskittel works on the air dredger?

A. It is, but we use a longer handle.

Q. You use a longer handle? A. Yes, sir.

Q. How long is the handle on the Arrott dredger which you use in the Weiskittel works?

A. Between five and six feet, that is, on the tub.

2 By Mr. Grosvenor:

Q. That is your handle on the Arrott dredger is five or six feet longer?

A. No, sir; it is five or six feet long; our old hand dredge handle is eight feet long; I measured it the other day to be sure of it.

By Mr. Noble:

Q. Have you measured the handle on your Arrott dredger? A. No, sir.

3 Q. But your best recollection is that it is between five and six feet long?

A. Yes, sir; that is on the tub; on the small ware we use a short handle.

Q. To what do you attribute the quality of enameled iron ware which you have been able to get and which you have described, with the use of the Arrott dredger—to what do you attribute the fact that you have gotten out that kind of ware?

A. I attribute that to the fact that we can use a finer gauze which sifts the enamel finer and we can get it on the

4 iron quicker.

Q. And that is due to what?

A. To the use of the air dredger.

Q. And the blow which you get with the air dredger, can you describe how rapid that is?

A. It is a continuous flow because the hammers are supposed to hit between seven and nine hundred per minute.

Q. Times per minute? A. Yes, sir.

Q. Can you give me a good estimate of how many times

you could hit with your hand when you use the old hand dredge? A. I might say 150. 1

Q. So there is that much difference which you have mentioned between the two? A. Yes, sir.

Q. And with the air dredger you get a continuous flow of enameling powder? A. Yes, sir.

Q. Whereas with the other you get it in intermittent puffs? A. Yes, sir.

Mr. NOBLE: That is all, I think.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Where is your factory, Mr. Fisher? 2

A. Lombard and Twelfth Streets.

Q. Is that far from here?

A. Twenty minutes by the cars.

Q. You say that you are the foreman out there?

A. Yes, sir.

Q. Does that mean the foreman of the whole works?

A. No, sir.

Q. Foreman of what department?

A. The enameling department.

Q. Does that include the making of the powder?

A. Yes, sir. 3

Q. Does it include the making of the cast iron of the tubs? A. I often go over there to look into that too.

Q. Are you foreman of that?

A. No, sir; but I give orders over there as well as in the enameling department.

Q. I am just trying to get your exact duties now; who has charge of the making of the iron?

A. Why, the foundry foreman has that.

Q. Does he analyze the iron, the pig iron?

A. No, sir; he is no chemist.

Q. He is not a chemist? 4

A. No, sir; I don't think so.

Q. Who does that? A. I couldn't say.

Q. Do you make the powder? A. Yes, sir.

Q. You decide the ingredients which shall go into the powder?

THE WITNESS: I don't understand that.

The last question was then read by the stenographer.

1 THE WITNESS: Do I decide it?
Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. You are foreman of the making of the powder?

A. Yes, sir.

Q. Are you a chemist? A. No, sir.

Q. How long have you had charge of the making of the powder? A. Seven years.

Q. Have you charge of the making of the slush?

A. Yes, sir.

Q. How long have you had charge of the making of
2 that? A. The same length of time.

Q. Seven years? A. About seven years, yes, sir.

Q. Before that seven years what were you then?

A. I was foreman around the shop. I had charge of the enamelers and worked around the furnaces too, learning the men, &c.

Q. But you were promoted seven years ago?

A. Yes, sir; to mixer.

Q. Now, these dredges which have been spoken of—have you one of those hand dredges out there?

3 THE WITNESS: Out at the shops?
Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. Did you have one of those long-handle dredges?

A. Yes, sir.

Q. Will you, after your examination is finished, or if it is not finished before recess, will you go out there and bring in for the next session one of the short—and one of the long-handle hand dredges?

4 Mr. NOBLE: I cannot see any point in that. He says that they are similar to these. I cannot see that it is necessary to collect a batch of these dredges.

Mr. GROSVENOR: I am not bound, certainly, by the statement of the witness that they are similar.

Q. Will you do that?

A. By the decision of the Court. I will if the Court sees fit.

Q. These experiments that you have referred to, when were they made? A. Since the first of the year.

Q. Since January, 1911? A. Yes, sir.

Q. Did you keep any record of those experiments?

A. Not particularly.

Q. Any written records?

A. No, sir, I did not make any of those kinds of tests at all; I tested the men.

Q. Did you watch the experiments?

A. I simply took the air away from them at times and put them back on the hand dredge; then I gave them back the air again. I wanted to be sure whether the men liked the air or not.

Q. You were not sure whether they did?

A. They can speak for themselves.

Q. Well, were you, at that time?

A. I was sure, but I wanted to test them out.

A. Yes, sir; on the tubs and have it still suspended on is that right?

A. Yes, sir; on the tubs and have it still suspended on the tubs.

Q. Just the way you had it on the long-handle dredge?

A. Yes, sir.

Q. And you simply cut the air out and let them w them without the air?

A. No, sir; not the same dredges; used different dredges altogether.

Q. Then you put the long-handled dredges back?

A. Yes, sir.

Q. How many tubs did you make that way, do you know?

A. No, I couldn't say; I did not keep a record of them.

Q. For several days were you making these experiments?

A. I made these at night and day too—both night and day too.

Q. Who directed you to make the experiments?

A. I done it myself; nobody directed me to do it.

Q. Who suggested it to you?

A. I suggested it myself.

Q. Did you stop the men working on the tubs for these experiments?

A. These men did not know anything about what I was doing. I just stopped them myself and they made a kick and they wanted the air again; I found that we could not hold our men without the air dredgers.

Q. Why were you so anxious to find that out at that time?

1 A. Why was I so anxious to find out—I just wanted to satisfy myself whether the men could get on with or without them, because if I was called up I wanted to speak the truth.

Q. You knew you were going to be a witness at that time?

A. No, sir; I did not know it.

Q. Well, did you think you were going to be a witness?

A. No, sir; I had not had the least idea.

Q. Did you have any talks with Mr. Weiskittel about it?

A. No, sir.

Q. Did you know that Mr. Weiskittel had any confer-
2 ences with any of the other defendants about what the defense was to be in his case?

Mr. NOBLE: Objected to.

A. No, sir.

Q. Had you talked to him about the suit?

THE WITNESS: In regard to the defense?

Mr. GROSVENOR: Yes.

A. No, sir.

Q. When did you first learn that you were going to be a witness in this case?

3 A. Last week—I think it was last Thursday; I am not positive. It was either Thursday or Friday, I think, the first I knew of it.

Q. Who told you?

A. Why, Mr. Weiskittel gave me notice that I was to be a witness.

Q. Did you tell him when you made those experiments?

A. No, sir; I did not tell him that until today; Mr. Weiskittel did not know anything about it until today.

Q. You cannot give any reason, then, for your making those experiments in January?

4 Mr. NOBLE: The witness has already given the reason. I object to the question.

Mr. GROSVENOR: Just read the question.

The stenographer then read the last question.

A. I just done it to see whether my men really could do as good work with the hand dredge as they did with the other or see how they liked it. The reason was that it is just like everything else when you start to change a man or learn him to do anything he gets awkward; now, there was a couple of

them that did not like the dredger on the start, and after I got them broke in to using it, which only took a couple of days, I told them about the first of the year, I said, Well, boys, I think I will cut the air out altogether. I took the air away from them and they made a kick, they come to me and told me that if I did not put the air back they could not stand it. That is why I made the test, to see how they would like it after using it for a while. 1

Q. You had not made up your mind, then, up to that time that you could not go on with the hand dredge?

A. Yes, sir; I knew it from the start, but my men had been accustomed to using the old hand dredge before that and it was only a couple of weeks until they got used to the air dredger, and my men have now told me only two weeks ago that they would not work with the old hand dredge any more. 2

Q. They like the air dredger? A. Yes, sir.

Q. But they had worked the old hand dredge?

A. Yes, sir; there is a man sitting right in this court room that used the old hand dredge, I venture to say, nine years ago.

Q. Did he work it continuously nine years?

A. Up until 1910, when we put the air dredger on. 3

Q. And he was one of the men who did not want a change?

A. He did not want a change then, but now he would not use the hand dredge.

Q. And in those nine years you had been selling the ware, had you not?

A. The firm was, I am not the firm; I had the making and they had the selling.

Q. They made pretty good ware during those nine years?

A. Tolerably fair, but not as good as we make now.

Q. It was good ware, though? A. Not so good— 4

Q. But it had a good sale?

A. Yes, sir; but not as good as it could be; if you would go around the country you would find that out. I am ashamed of the reputation of our place for the time I have been down there; you may smile, but what I am speaking is the truth.

Q. Why do you keep looking at Mr. Weiskittel?

A. I am not looking at Mr. Weiskittel; I am looking at you.

1 Q. Have you made any change in the powder in the last seven years? A. Yes, sir.

Q. Have you made any change in the cast iron?

A. We have not made any change in the cast iron, but that is seven years for the powder, now, mind you.

Q. But you did make changes in that time? A. Yes, sir.

Q. You found some powders worked better than some other kinds?

A. Altogether depending upon the conditions?

Q. What do you mean by the conditions?

A. Why, the different chemicals come in.

2 Q. Different chemicals come into the iron?

A. You asked me about the enamel.

Q. This is an intricate business, this making of enameled ware?

A. You asked me about the enamel and you asked me if the powders were changed in the last seven years and I said, Yes, and you said, Why were they changed? And I said because there are chemical changes.

Q. Why are there?

A. Because chemicals that are dug out of the earth are not all the same; they vary in the analysis.

3 Q. Have you made any changes in your cast iron in the last seven or eight years? A. Not to my knowledge.

Q. You do not have the analysis of that, though?

A. No, sir.

Q. State once more why you have changed your powder off and on in the last seven years?

A. I changed it to meet conditions.

Q. What conditions?

A. I don't think I have a right to answer that question, because that is a thing pertaining to the secrets belonging to the business, to the manufacturing.

4 Q. The formula for making the powder is one of the secrets of the business?

A. Yes, sir; but I will state this much; I have not changed my powder no way in the last year.

Q. You have in the last seven years?

A. Yes, sir; but not in the last year or in the last—well, I will say a little longer, but I am satisfied with a year.

Q. The formula for making the powder is one of the secrets of the business, is that right? A. Yes, sir.

Q. Why is it secret?

Mr. NOBLE: I do not think the Government ought to go into the question of that. Upon request of counsel for the Government I did not go into it. 1

BY MR. GROSVENOR:

Q. Why is it a secret?

A. It is the same as anything else. That is my living. I do not propose to give it to anybody else and let them come in and take my place for half the salary I am getting.

Q. How about the slush coat, is that one of the secrets?

A. Yes, sir.

Q. Would you tell anybody what that is? A. No, sir. 2

Q. Can you make good enameled ware unless you have a good slush coat, the proper ingredients?

A. You have to have a good first coat and a good enamel, both.

Q. Both of those things? A. Yes, sir.

Q. Both of those things are essential, aren't they?

A. Yes, sir.

Q. Your enamel is better than some others?

A. That I would not like to say; I don't know what the other men are making. I only know what I am making myself. 3

Q. Did you change the enameling powder after you became the foreman seven years ago of the enameling department? A. Slightly.

Q. You got a better enamel, is that right? A. I think so.

Q. Worked more satisfactorily, did it? A. I think it does.

Q. You did not have so many seconds?

A. Have just as many seconds as then; yes, sir; just as many as then.

Q. Why do you consider your powder better than the powder that was used before that?

A. Why, because the powder stands better. 4

Q. What do you mean? A. It stands the wear better.

Q. It fuses more readily? A. No, I could not say that.

Q. It retains its polish better?

A. Yes, has a better gloss and a better color.

Q. That is the only way it changes?

A. It shows up that way; that is one of the great things in the business, you want a shiny piece of ware; just like having a house painted you want it bright and shiny.

Q. Does the quality of the powder have anything to do

with the falling of the enamel after putting it in the furnace?

A. You have that wrong; it is while you are putting it in the furnace; it falls while picking it up from the hood; the quality of the enamel has nothing at all to do with that.

Q. You say the quality of the enamel has nothing to do with that?

THE WITNESS: The falling.

MR. GROSVENOR: Well, describe what falling you refer to.

THE WITNESS: You said the powder falling from the tub in the furnace.

Q. I understood you to say that when you swung the tub on the crane that if it is jarred when it is set down on the angle irons, is that right— A. Yes.

Q. That the powder may fly down from the ends of the tub; is that right?

A. I said in picking it up out of the hood on the table the least little jar would jar it down.

Q. Jar the powder down? A. Yes, sir.

Q. That is after the powder is put on the tub?

A. Yes, sir.

Q. Now, my question is this: In that case where you say the powder might fall after a slight jar, does the quality of the powder have anything to do with its falling? A. No, sir.

Q. Irrespective, then, of the quality of the powder, it will fall; is that right, that is, if it is slightly jarred?

A. If they do not get the powder on there thick enough and they put it on too much on the ends—as I stated in my direct evidence, it will fall; yes, sir.

Q. Have you ever worked in any other factory?

A. No, sir; I have never worked in any other factory.

Q. Have you ever inspected any other factory?

A. I have never inspected any other factory.

Q. Have you ever been over any other factory?

A. I have been inside of them, but not to inspect them.

Q. What factories?

A. The McShane Manufacturing Company.

Q. Are they in business now? A. No, sir.

Q. What sort of a dredge did they use?

A. The hand dredge and the air dredger both.

Q. When was that?

A. I judge about five or six years ago. 1

Q. And they were using an air dredger then?

A. Yes, sir.

Q. And what other factory have you been over?

A. I have been to New Brighton.

Q. That is where you met Mr. Shield, is that right?

A. Yes, sir.

Q. When did you go over that factory?

THE WITNESS: Sir?

Q. When did you go over that factory?

A. I guess that has been about six or seven months ago; 2
longer than that, maybe.

Q. How long have you been using this long-handle dredge?

Mr. NOBLE: The hand dredge or the air dredger?

Mr. GROSVENOR: The long-handle dredge that is suspended, that is eight or nine feet long?

A. I should say twelve years.

Q. You did not get the idea, then, of the long-handle dredge from the New Brighton factory?

A. No, sir, I believe I am the inventor of the long-handle hand dredge. 3

Q. It is very much like this Exhibit No. 279, is it not?

A. Yes, sir; only I believe it is in a little better shape than that one and a little bigger dredge.

Q. But it is suspended? A. Yes, sir.

Q. And it enables the workman to stand a little further away from the tub, that is, further than the air dredger?

A. No, sir, not with the air dredger I am using; my air dredger handle is 5 or six feet.

Q. It is longer than this one (indicating)?

A. Yes, sir; that is the one on the tubs.

Q. The Arrott dredger you use has a longer handle than 4
this Exhibit No. 280?

A. Yes, sir; on the tubs; I put a long handle in my air dredger on the tubs.

Q. You said that the workmen using this air dredger make more money than under the old dredge?

A. Yes, sir; makes more with the new one.

Q. How much more?

A. Gets paid the same price for his ware and there is a difference in the grade of the tubs; there is a difference of

1 five, seven and nine cents in a piece. He can turn out more tubs per day and he can make better ware, and he gets more of these five, seven and nine cents, and so he makes more money, and he averages a couple more tubs a day in the same time.

Q. At your factory you pay the workmen by the piece or the tubs, is that right? A. Yes, sir.

Q. And then they are further classified so that if it is an A No. 1 tub he gets more than if it was a tub not so good? A. Yes, sir.

Q. The tubs are divided into how many classes with
2 reference to the wages of the workmen? A. Two classes.

Q. A and B? A. Yes, sir.

Q. So after the introduction of the Arrott dredger there was no change in the amount paid per piece? A. No, sir.

Q. But he gets more A's?

A. Yes, sir; or firsts—what we term firsts.

Q. Are you the inspector to decide whether the tub is an A or a B? A. I do not inspect them.

Q. Who does that? A. My assistant.

Q. Who is he? A. Ralph McCleary.

Q. Then, in each particular case he determines whether
3 a man should be paid for an A or a B tub?

A. Yes, sir; each man sees his own work, though.

Q. Do you keep a record of the tubs made by each workman?

A. We have records of them right along; we take daily statements and I make up the time.

Q. And then they are paid at the end of the week, I suppose? A. Yes, sir.

Q. Then there has been no change in the keeping of the statements since you changed the character of the dredges, have there?

4 A. Not to my knowledge.

Q. This assistant of yours has been inspecting the work how long?

A. He has been inspecting the work now, I guess two or three years.

Q. How many Arrott dredgers do you have in your factory?

THE WITNESS: In operation at the same time?

Mr. GROSVENOR: No, how many like this (indicat-

ing) have you there now? What would you call this, an instrument or a tool? 1

A. We would call that a dredge; we have got four, as I stated, long-handle air dredgers, between five and six feet long.

Q. Did you make those yourself?

A. Yes, sir; made them ourselves.

Q. How many little ones are there?

A. Then we have got two about four inches in diameter with a short handle like that (indicating) that we use for rimming; then we have two for the small furnace; one is about seven inches in diameter and the other about nine—eight or nine. 2

Q. You did not make all of these at once, did you?

A. Made them to experiment and see which was the best.

Q. And then put them in, one after the other, is that right? A. Yes, sir.

Q. When did you put in your first one?

A. Put in the first one along about June 1; started in with a couple of them; just changed about to see which would work the best; one thing we have always done, and which Mr. Weiskittel has always done, he would say, Charlie, try to see the best way to work your men and to the best advantage, and that is why I put in the air dredger. 3

Q. What do you mean by saying, "to see which would work the best"?

A. Which would work to the best advantage of the men.

Q. The long-handle—

A. Or the short-handle.

By Mr. Noble:

Q. But you are speaking altogether of the air dredger?

A. Yes, sir. 4

By Mr. Grosvenor:

Q. When did you give up using the long-handle hand dredge? A. Along in June we stopped it.

Q. Entirely? A. In 1910.

Q. Entirely?

A. Yes, sir; and we started up and we have used it since, though, as I told you.

Q. Now, I want you to bring into court at the next hear-

1 ing the records which you keep showing that the workmen get more—that is, that the enamelers using the Arrott dredger get more than by using the other. How many of these enamelers are there out there?

A. I have three of them here.

Q. Were these three men working under the old method?

A. Yes, sir.

Q. How long did they work under the old method?

A. One there worked eight or nine years under the old method; one of them did not work very long, and the other worked about four years. They have been working around

2 the furnace.

Q. I want these records brought in just as you keep them you understand?

A. I don't keep no records after the week; I just turn the records over to the office. I just get a daily report and I make up the records from that and turn them into the office.

Q. Do you keep a copy for yourself? A. No, sir.

Q. Mr. Heise is the secretary, is he not?

A. I think he is.

Q. Who has charge of the office there? A. Mr. Heise.

Q. You pronounce it H-e-i-s-e?

3 A. Yes, sir; I think something like that.

Mr. GROSVENOR: Well, you ask Mr. Heise to give those records to you.

Q. Now, were you consulted at all during the early part of 1910 respecting this licensing arrangement which your company entered into with Wayman? A. No, sir.

Q. I do not suppose you know anything about it?

A. No, sir.

Q. When did you first hear about it?

A. When I saw it in the paper.

4 Q. How long does it take to enamel a tub when it first comes out of the furnace, that is, with the Arrott patent?

THE WITNESS: When it first comes out of there?

Mr. GROSVENOR: Yes.

A. I never timed it.

Q. Did you ever take the time under the old dredge?

A. No, sir.

Q. When you say one is shorter than the other you speak from observation and not from having timed it?

A. Just from observation. 1

Q. Did you have anything to do with the molding room?

A. Only to go over there and tell them what I want, that is all.

Q. You did not direct the making of the patterns, then?

A. Oh, no, sir.

Q. Are they working patterns—

A. (Interrupting): Sometimes I do.

Q. Well, who has charge of them out there?

A. It depends altogether on what kind of patterns they are; sometimes they come under me.

Q. What patterns come under you? 2

A. Those pertaining to the enameling business, such as the tubs or sinks or lavatories; something like that.

Q. You said you used to go out sometimes to help an enameler to tap when his arm was tired, is that right?

A. I went out to help them finish up a tub more than once. Often I have done it. I don't understand that word "tap."

Q. Do you mean to imply that the workmen would have to stop the rapping and you would have to do the rapping for him?

A. You used the word "tap"; I don't understand that, 3 and I had to ask you that over again—

Mr. GROSVENOR: Just read him the question over again.

The stenographer then read the question referred to.

A. It is right; yes, sir.

Q. What do you mean by that? Did you have to do the tapping for him?

A. Had to do what we call the beating, had to beat the enamel out. 4

Q. How often did you have to do that?

A. On frequent occasions I had to do it.

Q. What do you mean by frequent occasions?

A. I have done it already sometimes as much as two or three times a day and sometimes would go a week without doing it again.

Q. Sometimes you would go for a month without doing it? A. No, sir; I don't think I did.

Q. Mightn't it be a month?

A. No, sir; I don't think it ever was a month that somebody did not have to have help.

Q. You say you have not changed your castings since you got the Arrott dredger?

A. No, sir, we have not changed the casting.

Q. Your weights have been during the last eight or nine years about the same as the weights of your competitors, haven't they?

Mr. NOBLE: The witness has not shown in his examination that he knows anything about the weights of the tubs of the other manufacturers. I think you should specify the type so that the witness could answer specifically.

A. I don't know anything about the other people's weights.

Q. You don't know then if your weights have been lighter or heavier than the other manufacturers' tubs?

A. No, sir; but I know that we have not changed our weights.

Q. Do you know whether your tubs are lighter or heavier than the tubs of your competitors of similar design?

A. I could not answer that question.

Q. You don't know, is that it? A. That is it.

Q. How many men did you have engaged in those experiments which you testified you had conducted early in January, 1911?

A. I had practically all of my men.

Q. Did you take one night or one day to it or did you prolong the experiments during several days?

A. Oh, I took several—did it frequently since the first of the year.

Q. Since the first of the year? A. Yes, sir.

Q. You have done it very often? A. Yes, sir.

Q. Used the hand dredge sometimes? A. Yes, sir.

Q. And sometimes the automatic dredger? A. Yes, sir.

Q. Was that while the men were on their turns?

A. Yes, sir; the men were on their turns while we were using it.

Q. These men worked on eight hour turns, is that right?

A. They had been, but now they are on six; that is, on bathtubs.

Q. When a man goes on a turn for eight or six hours his

object is to get as many good tubs made during that time as he can; is that right? A. Yes, sir. 1

Q. It is while they were on these turns that you made your experiments? A. Yes, sir.

Q. You asked them to try and— A. No, sir.

Q. Well, what did you do?

A. Just simply shut the air off.

Q. So they could not use it? A. Yes, sir.

Q. And what did they do?

A. I told them there was something wrong with the air and that they would have to go ahead with the hand dredges until the compressor was fixed. 2

Q. That has happened several times?

A. Yes, sir; this year.

Q. Didn't it happen in 1910?

A. Not experiments, but we had one of the compressors to break down then.

Q. When these workmen came to you and said something was wrong with the air and would not work, you say you told them that the compressor was out of condition?

A. Yes, sir.

Q. You did not tell them, then, that you were having an experiment? A. No, sir. 3

Q. The fact was that the compressor was all right, is that it? A. The compressor was all right.

Q. Now, how many times did you get the men to use these long-handle dredges in that way?

A. That I could not tell you, because, as I told you, I did not keep any record. As to anything like that, I would rather the men should answer as to that.

Q. Then they would go along and use the hand dredge, is that right? A. Yes, sir.

Q. And if they did not make as many A tubs they got less pay? A. Yes, sir. 4

Q. And if they made the same they were paid the same?

A. If they made it they got it.

Q. I want you to bring these records for January and February, 1911. Do you understand that? A. Yes, sir.

Mr. Noble: The witness has already said that he turned in his time sheets and has kept no records. He said he turned in his time sheets to the members of the company.

1 By Mr. Grosvenor:

Q. Did you do any of these experiments during the last week?

The Witness: This last week?

Mr. Grosvenor: Yes.

A. I had them to work with the hand dredges last week, the long-handle ones.

Q. What days during last week?

A. I had them work six nights with it.

Q. That is the night turns? A. Yes, sir.

2 Q. Then you have turned those records in?

A. Yes, sir.

Q. When did you do that? A. Turned them in daily.

Q. When, before last week, did you have some of these experiments made?

A. Well, I have had them right along since 1911, going right along with them, experimenting with them.

Q. Take the week before last, did you have experiments during that week? A. Yes, sir.

Q. On the night or day turn? A. Night turn.

Q. Not on the day turn?

3 A. I couldn't say; I didn't keep no record of the day time when I changed the men about; maybe one of the men could answer that question better.

Q. The week before that did you have any experiments?

A. Yes, sir.

Q. When, night or day? A. Night.

Q. And the week before that did you have them?

A. I don't want to go back past the first of the year; I want to be a little careful, because I am here under oath and what I say I want to be the truth; that is why I want to be careful.

4 Q. We only want the truth; this last week you had experiments? A. Yes, sir.

Q. And it was on the night force? A. Yes, sir.

Q. Did you do any during the day time?

A. I don't experiment.

Q. You used the hand dredge, though, during the day time? A. The air dredger during the day time.

Q. You did not use the hand dredge during the day time?

A. No, sir; unless if we did it, it was because of a breakdown or something like that.

Q. If there is a breakdown you go on using the hand dredge, is that right? A. Yes, sir. 1

Q. This last week, then, you used this hand dredge on the night turn? A. Yes, sir.

Q. Was that on account of a breakdown or on account of an experiment?

A. It was on account of an experiment; that is the only thing I can say.

Q. You don't know whether you used the hand dredge during the day time last week?

A. Not unless it was for a breakdown or something like that to hold us up. 2

Q. But you did not make experiments? A. No, sir.

Q. Why can't you call that an experiment?

A. Because it would be an accident—

Mr. NOBLE: I object to that. The witness has been very explicit and candid and full in his testimony.

Mr. GROSVENOR: I disagree with counsel as to the adjectives used.

Q. When you turned the compressed air off so as to have the hand dredge used, you call that an experiment?

A. Yes, sir. 3

Q. But when the compressed air gets out of order and it is not you who shall determine which dredge shall be used, then you call that an accident? A. Yes, sir.

Q. Last week you used a hand dredge during the night but it was by experiment? A. Yes, sir.

Q. You cannot remember whether you used it during the daytime, is that right? A. I cannot say; no, sir.

Q. Now, going back to the week before last, did you make experiments during the night?

A. I used the hand dredge at night, the long-handle hand dredge at night. 4

Q. Is that an experiment?

A. I would call them all experiments when we are not giving them the air to use. If it is shut off by an accident, it is an accident, though.

Q. When it is shut off by accident, though, you then use the hand dredges? A. Yes, sir.

Q. Week before last, though, you used the hand dredges at night?

A. Yes, sir; I have used the hand dredges right along.

1 Q. Right along during this year?

A. Yes, sir; I have told you that.

Q. Every week? A. Practically every week.

Q. What do you mean by practically?

A. Well, I don't want to say every week, because we did not have it every week, but the majority of the weeks since 1911.

Q. Then you were experimenting off and on the whole of 1911?

A. Yes, sir; I was testing the men out; you can put it that way if you want it.

2 Q. How is the power for the compressed air operated?

A. By a compressor.

Q. What is that connected with?

A. We have it connected with steam and we have one belt driven.

Mr. NOBLE: You have what?

THE WITNESS: One belt driven and one steam driven.

BY Mr. GROSVENOR:

3 Q. Are any of these experiments which you have in the night time induced by the fact that it is more economical to turn off the compressed air then?

A. I made the suggestion to Mr. Weiskittel myself. He did not know what my object was. I suggested that we shut the air down at night and it was more than two weeks before I got his consent, and I never told him what I done it for until today. It was me and not Mr. Weiskittel. I did it when I read about this suit in the papers.

Q. Then, during the year 1911, for the purposes of economy, you shut down this compressor?

4 Mr. NOBLE: He did not say that.

Mr. GROSVENOR: Read the question.

The stenographer then read the last question.

A. Not to my knowledge; I made this suggestion to Mr. Weiskittel myself but, in fact, I did use the word "economical" for an excuse to get Mr. Weiskittel's permission to shut it down. I used that for a purpose.

Mr. GROSVENOR: Now, I want this witness to bring

those records referred to or to come and testify why 1
he has not brought them.

Mr. NOBLE: The witness has testified that those records for which you ask are records which were turned in by him, day by day, to the officers of the company; that they are not in his possession and that he has kept no copies of them.

Mr. GROSVENOR: These papers are for the purpose of legitimate cross examination. He has testified that the men, under certain conditions, made more money than under others, and he also testified as to certain experiments; he also testified that records 2
were kept of those experiments.

Mr. NOBLE: If counsel for Government wants the records he can subpœna them.

Mr. GROSVENOR: I also want those dredges.

Mr. NOBLE: We will be here another day. Won't that do?

Mr. GROSVENOR: No, I want them before the examination is through. I want them at this hearing. We will adjourn, now, if that is satisfactory, until two o'clock.

THE WITNESS: It will be impossible for me to go 3
out and get them in that time.

Mr. GROSVENOR: Then, we will suspend with your cross examination afterwards and you can go out and get them.

Examination Suspended.

At this point a recess was taken until 2 o'clock.

After Recess.

Theodore A. Rettaliata, official court stenographer in the 4
Circuit Court of Baltimore City, having been duly sworn by the Commissioner to truly and impartially transcribe testimony in this case, proceeded to take the following testimony.

CHARLES A. FISHER (resumed):

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Fisher, returning now to that point and to that question of the experiments. I want to get that a little more clearly on the record. You testified that those experiments

were made since January 1st, 1911, is that right? A. It is.

Q. And they were made without your telling Mr. Weiskittel, is that right? A. Yes, sir.

Q. You did not know at that time you were going to be a witness? A. No, sir, I did not.

Q. These experiments were made mostly of a night time, is that right? A. Yes, sir.

Q. All in the night time, as far as you can recall?

A. I won't say that; I kept no record of the day time, and that is the reason I will not answer yes or no as to any day time; that is the reason I will not do it, because I could not clearly do it, conscientiously do it, and speak the truth; I could not say what time it was. I want to tell the truth, and that is what I am going to do, and if I cannot tell the truth I won't answer the question.

Q. Let's see how nearly we can get to it. Last week they were all at night?

A. They were all at night last week, yes, sir.

Q. And these experiments were all of two kinds, some during the night when you turned off the air compressor, is that right? A. Yes.

Q. And sometimes during the day time with the air compressor? A. Yes, sir.

Q. Some time during the day time when the air compressor was out of commission, is that right? A. Yes, sir.

Q. Then all these experiments were during the night time, except those which occurred during the day time, owing to the fact that your air compressor was out of commission, is that right? A. In the day time?

Q. Yes.

A. That was owing to the air compressor being out of commission.

Q. Then whatever experiments you had in the day time were had owing to the fact that the air compressor was out of commission? A. Yes.

Q. But those which you had during the night time were had because you turned the air compressor out? A. Yes.

Q. Off? A. Yes, let the air compressor down, yes.

Q. Now you testified that about the 1st of January you said something to Mr. Weiskittel about the economical advantage, what was that?

A. I told you that it was just simply this, that our business did not justify us to run any more than one furnace,

and hardly that, and I made the suggestion to Mr. Weiskittel 1
that we shut the compressor down at night.

Q. At night?

A. Yes, on account of we didn't have the sales for the goods, our place being stocked up, and having been putting our men on six hours turn. Then I said we were justified in not running the compressor at night for one furnace, that is the plea I made to Mr. Weiskittel. We were not justified in having an engineer and fireman and all of that for the one furnace; I said we were not justified in doing it.

Q. This compressor, or the engine running the compressor, was not used for any other purpose except the auto- 2
matic dredger?

A. For the automatic dredger and to light the place.

Q. How did you light your place?

A. By electricity. As I stated in my evidence, we had a belt driven air compressor, and the same engine that operated that compressor operated the generator.

Q. For the electricity? A. Yes.

Q. But you could not use it for both at the same time?

A. Yes, you could use it for both at the same time. You see it is belt driven, you understand what that is, and you run a belt from the engine to a shaft, what we call a main 3
shaft or something, I do not know what you might term it, some call it a gang shaft, and the belt is run from the engine to that shaft and from that shaft we run down belts to the compressor and also to the generator which generated the current, both on the same engine.

Q. You told Mr. Weiskittel then that it would be more economical not to use the air compressor at night for the one furnace, is that right? A. Yes.

Q. And you would then put your men, you told him, on the hand dredge, is that right? A. Yes, at night.

Q. And at night would cover two six hours turns? 4

A. The way to work is this: we work from 4 A. M. in the morning to 10 A. M.; from 10 A. M. to 4 P. M. and from then to 10 P. M.; from 10 P. M. to 4 A. M. There are three turns for the use of the air dredger and three for the use of the hand dredge.

Q. During the time of the experiments?

A. During the twenty-four hours.

Q. Would be eight hour turns?

A. Six hours. Three of them used the air compressor

1 and three of them used the hand dredge at the same time; that brings it from four to seven in the morning, using the hand.

Q. From 4 in the afternoon to 7 in the morning?

A. From 4 A. M. to 7 A. M. used the hand, and then from 7 A. M. to 10 A. M. they used the air dredger, the same men, and from 10 A. M. to 4 P. M. they used the air, and from 4 P. M. to between half-past 5 and 6 they used the air, and from that time until 10 P. M. they used the hand, and the one turn from 10 P. M. to 4 A. M. they used the hand exclusively.

2 Q. When they were using the hand dredge, the air-compressor was turned off, is that right? A. Yes.

Q. And you told Mr. Weiskittel it would be more economical to have it turned off? A. I certainly did.

Q. Did he agree with you?

A. Yes, after about three weeks,—two weeks, over two weeks he agreed with me. It was between two and three weeks.

Q. After you had been doing it this way he agreed with you?

A. He agreed with me before we done it, before we cut 3 the air out at night.

Q. He agreed with you that to go to the hand method it would be more economical?

A. He agreed for me to do this. He gave his consent for me to go ahead if I thought it was best, that is the way he used the words, "If you think it is best, Charley, go ahead and do it."

Q. Then the reason you turned off the air compressor was because you thought it would be more economical, is that right?

A. I thought that at the time, but it is not, to tell you 4 the real truth, it is not. I thought so too, but I did not do it for that purpose, I done it to test my men as I told you a man with the air dredger could make a better piece of ware than with the hand dredge. There is no economy in pouring anything into a bung-hole and letting it run out of the spigot.

Q. You told Mr. Weiskittel at the time that it was more economical?

A. I told him I thought it would be. I simply used that for an argument to gain my point what I was after.

Q. And you wanted to do what? 1

A. I wanted to prove to the men and the firm and myself that the air dredger was far superior to the hand dredge.

Q. And you began to do this January 1st, 1911?

A. I did not say that.

Q. When was it that you began?

A. I told you along about that time is when I took up the argument with Mr. Weiskittel to get his consent to allow me to do it, and I said it was a couple of weeks before he gave his consent. If I am not mistaken I think that is what I stated.

Q. Then when he gave his consent, you started to do it, 2 is that right? A. Yes.

Q. Then how long did you continue doing it after you started, are you doing it today? A. Yes.

Q. So then at the present time you are shutting down your air compressor at night? A. Yes.

Q. Then you are still continuing these experiments?

A. I am going right along with them, yes, sir.

Q. Going right along with these experiments, as you call them, is that right? A. Well, I cannot say it is.

Q. Don't you call them experiments any more?

A. No more, no, sir. I do not call it experiments any 3 more, because I have done it, and I have satisfied myself about it, because the men have all come to me with complaints that they want the air, and they can do better work with the air.

Q. And you are still making them use the hand when the air compressor is turned off? A. Yes.

Q. During the period you have testified about, you are making them use the hand dredges, is that right?

A. Yes, but I am satisfied that now, after Mr. Weiskittel has heard my statement right here he will make me put the air in again, as long as he has heard my statement. There 4 hasn't been a man before today that has been told of this.

Q. Now, let me ask you frankly, Mr. Fisher, isn't it a fact that when you began to shut off the air compressor at night, the true reason was that which you stated to Mr. Weiskittel, that you thought it was more economical to shut it off at night? A. No, sir.

Q. Then it was for the purpose of making the experiments, is that right?

1 RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. As I understand you, Mr. Fisher, you have found out again by the use of these hand dredges, during the last two or three weeks, that the tubs made that way cannot compare in quality with the tubs made with the air dredger, is that correct?

A. No, sir, they cannot. I can state one little instance to you of one of my own men on the small ware that has been with me a right good while. He was on the night turn when I had the air off—

2 BY Mr. GROSVENOR:

Q. That is during the time you were making these experiments?

A. I am stating the difference between the air and the hand dredge now with this man. He come down in the morning,—they work eight hours—he came down and says to me, Well, he says, Mr. Fisher, he says, I am glad I am on day turn now. I said, Why? He said, I am going to get all A's now, with the air dredger, he could make good ware, but with the hand dredge he couldn't.

3 Q. Do they get more pay when they make "A" tubs than when they make "B" tubs? A. Yes.

Q. They get more money for the work?

A. Yes, both for small ware and tubs too.

Q. What percentage do they get more?

A. Well, take a four and a four and a half foot tub, they get five cents more for it for "A's" than they do for "B's", and on a five foot tub they get seven cents more for "A's" than they do for "B's", and on a five and a half and six foot tub, they get nine cents more for "A's" than they do for "B's".

4 Q. They get 5, 7 and 9 cents more on the "A" tubs, the dimensions of which you have given, than they would on the "B" tub of the same dimensions? A. Yes.

Q. They get those additional amounts for "A's" and for "B's" they get an amount with the additional amount deducted? A. Yes.

Q. In reference to their losing tubs because they were defective, have you found that true since you have been trying out your men on these hand dredges?

A. Yes, I found it the same way, as I have stated.

RE-CROSS EXAMINATION BY Mr. GROSVENOR: 1

Q. You are today turning off the air at night, is that right? A. Yes, I stated that.

Q. Which means you could not use the air dredger at night?

A. Yes. I expect when I go back the air will be running at night. I guess after Mr. Weiskittel has heard me he will put it in again.

Q. Why do you think so?

A. Because on my own statement I had to acknowledge under oath that I was in the wrong in changing it, and I have to acknowledge the truth under oath. He was right there and heard me. 2

Q. So you think, having heard you under oath, when he goes back to his factory he will change the method?

A. He will change it, yes, sir, I am perfectly satisfied of that.

Examination of the witness concluded.

HERMAN O. GOLDSMITH, a witness of lawful age, having first been duly cautioned, being duly sworn, testified on behalf of the defendant, A. Weiskittel & Son, as follows: 3

DIRECT EXAMINATION BY THE COMMISSIONER:

Q. What is your full name? A. Herman O. Goldsmith.

BY Mr. NOBLE:

Q. Will you state your full name and address, Mr. Goldsmith? A. Herman O. Goldsmith, and—

Q. Where do you reside? A. No. 3503 E. Baltimore St.

Q. Where are you employed?

A. A. Weiskittel & Son Co.

Q. What is your business there?

A. Enameling of bath tubs. 4

Q. How many years have you been with the A. Weiskittel & Sons Co.?

A. I have been with the firm for about nine years, nine or ten years.

Q. During that time what kind of ware have you enameled?

A. Well, I have not been enameling but four or five years.

Q. During the time that you have been enameling, what kind of ware have you enameled?

1 A. Bath tubs and small ware.

Q. Have you enameled both by the use of the hand dredge and the air dredger? A. Yes.

Q. Was the hand dredge which you used similar to Exhibit 279 (indicating Exhibit 279)?

A. Yes, similar to that on the tubs.

Q. You used that on the tubs? A. Yes.

Q. Did you ever use a hand dredge similar to Exhibit 278 (indicating Exhibit 278)?

A. Yes, on small ware.

Q. You used that on small ware? A. Yes.

2 Q. Is the Arrott dredger which you used similar to Exhibit 280 (indicating Exhibit 280)?

A. It is, only the handle is a little longer.

Q. Now, in enameling the small ware, you used a hand-dredge like the short handle one which I showed you, is that correct? A. Yes.

Q. Just tell us how you operated that dredge, won't you?

A. You put your arm here, put it under your arm in this way (indicating).

Q. What was that?

A. You put it under your arm in this way (indicating).

3 Q. The handle resting under your elbow?

A. Yes, in this way (indicating).

Q. The handle is held in one hand and rested under the elbow, and with the other hand you beat with the hammer?

A. We call this a beater (indicating).

Q. You beat with a beater? A. Yes.

Q. Was there any difficulty about the use of that hand dredge in your experience?

A. Oh, yes, it made your arm stiff and your wrist sometimes just fell down and gave away that way (indicating), and you didn't have no more use for it.

4 Q. That is your left arm in which you held the dredge was stiff?

A. Yes, kind of stiff down there (indicating) and often I came home I would have a cramp like in my hand from holding it and in my shoulder too.

Q. That is all on your left arm and shoulder?

A. Yes. On my right hand it would be around the wrist, and often I would go home and I could not raise my arm to wash the back of my neck and especially would that be

so in the summer time, and I would have to drop it, there would be kind of a cramp in it. 1

Q. How much powder did you put in one of these hand dredges, approximately, in weight?

A. I have never weighed it, and I could not tell you.

Q. You say you used these hand dredges on small ware?

A. Yes.

Q. Now, the long handle hand dredge similar to Exhibit 279 which I showed you, was suspended by what?

A. By a wire from the ceiling, an iron chain, a regular chain.

Q. Suspended from the ceiling? A. Yes. 2

Q. How did you operate that?

A. The chain would come down here (indicating).

Q. And fasten to that clamp?

A. Yes. You take the handle right here at the hip (indicating) and beat on it with the beater. If you want to use it on the sides you do this way (indicating), and to get down to the bottom you have to raise it up this way to go down to the bottom (indicating).

Q. So that, let me see if I cannot get that down in some questions. The long handle hand dredge was suspended from the ceiling by a chain. A. Yes. 3

Q. And then you held it under your left arm? A. Yes.

Q. And against your side? A. On my hip.

Q. Then I understand you guided it with your left hand?

A. Yes.

Q. And how did you beat it to get the powder out?

A. Beat it with the right hand like this (indicating).

Q. Was the beater which you had somewhat similar to the one that is attached to that?

A. It was a little longer than this. The handle is about the same size, but the iron part was longer.

Q. Did you have any difficulty in using that dredge? 4

A. Yes, the same way almost as the small dredge. You cramped your hand, only with the long handled dredge on tubs my hand was full of blisters and corns, and every day I had a blister around the thumb here where the beater would come, from beating.

Q. You had to beat so hard?

A. Yes, that it formed blisters on my hand.

Q. On your right hand, in which you held the beater?

A. Yes.

work, or the same amount of work, and be less tired, is that correct? A. Yes.

Q. With which kind of a dredge can you make the best enameled ware? A. With the air dredger.

Q. Tell me why, won't you?

A. Because the powder comes out smoother, as I stated, than with the hand dredge, and you can cover the tub better, and the tub stays hotter, and you can go over it quicker, and the tub stays hot longer. You can go over it quicker, and the powder sticks to the iron better, and after it is melted it is all smooth, where with the hand dredge you find lumps that won't melt, and if you go down to melt those lumps it would form a roll, and if you left this one part smooth where there wasn't so much powder, and the other would have lumps in it, that wouldn't be no good tub; it wouldn't pass for a good tub.

Q. With the hand dredge, if I understood you, you said that the powder backed down in the dredge?

A. Yes, the powder it beats right down in the bottom, and that is what plays you out. You have to stop sometimes to get someone to loosen it before you can start to work again.

Q. Whereas with the air dredger it keeps coming out evenly all the time?

A. Yes, the powder is always loose; the hammering on there keeps it loose all the time, and you don't have to bother with it at all.

Q. How long did it take you to learn to use the old hand dredge, if you remember?

A. The first time I went on I was on for a week, and I couldn't do nothing, and I gave it up and went to forking, putting the rim on; I do not know how long I was forking, about a year I guess, and I went back enameling again, and it took me a couple of weeks to get into it.

Q. You had been putting on rims during that year that you were forking? A. Yes.

Q. What kind of dredge did you use to put on rims?

A. Short handle dredge.

Q. And after that you got the long handle dredge and enameled the insides of tubs, is that what you mean?

A. Yes.

Q. How long did it take you to learn to use the Arrott dredger? A. Two or three days.

Q. Would you go back to use the hand dredge now right along? A. No, sir, I do not think I would. 1

Q. Why not?

A. Because I think it would play me out now, especially in the summer time. I know I could not stand it then.

Q. Yet you did use the old hand dredge for a number of years before you learned to use the air dredge? A. Yes.

Q. Can you make as good an enameled article with the hand dredge as you can with the air dredger? A. No, sir.

Q. Why not? A. Why not?

Q. Yes?

A. Well, as I stated, the tubs are smoother with the air dredger, and I can tell by my pay-roll, too, when Saturday night comes around. 2

Q. By which method do you get the more pay?

A. By the air dredger.

Q. Why do you get more pay by the air dredge?

A. Because the tubs turn out better with the air dredger, it makes a smoother ware, a finer looking ware. They turn them out with the air dredger now that you hardly ever see a flaw in them, you never do see a flaw in them, while with the hand dredge, there is always a lump here and a lump there. 3

Q. How many first quality tubs, or "A" class tubs can you turn out with the hand dredge in a turn of eight hours, "A" class, mind you?

A. I do not believe you can turn any of them out good.

Q. In the old days when you were using the hand dredge, what is your recollection of the number of "A" tubs that you would make in a turn? A. Eight hours?

Q. Yes. A. Make about ten or eleven.

Q. Would they all be "A's" or would some of them be "B's"? A. A great deal of them would be "B" tubs.

Q. So the average of your work, when you were working that way would be about ten tubs a turn? 4

A. About that, ten or eleven and sometimes twelve.

Q. And out of that ten or eleven, how many would you get as an average class "A," and how many would you get as an average class "B"?

A. I guess I would get about out of that ten, four "A."

Q. And about six "B's"?

A. Yes, I guess I would get out of that ten about six "B."

1 Q. Take a turn of eight hours in using the pneumatic dredger, the Arrott dredger, how many tubs would you turn out as an average?

A. Thirteen, fourteen, and fifteen; I have turned out fifteen already, and out of that fifteen—

Q. Out of that fifteen, out of that number that you turned out, how many would there be A tubs?

A. If I turned out fourteen tubs, there would be about ten or twelve "A" tubs.

Q. And only two to four "B" tubs? A. Yes.

Q. Do you know whether the sieve in the Arrott dredger
2 which you used has a finer or coarser mesh than it had with the old hand dredge?

A. It has a finer mesh in the Arrott dredger.

Q. Have you worked during the last two or three weeks any on the night turn?

A. I worked part night turn, yes, sir, last week; I worked part day and part night.

Q. Did you make any tubs by hand during any of the times that you worked recently? A. Yes.

Q. Well, now, what was your experience as to the quality of tubs you turned out by the hand method as compared
3 with the quality of tubs you turned out with the air method?

A. Well, with the air dredger, I got nearly all "A's," and with the hand dredge it was nearly all "B's."

Q. Did you make just as much effort to make good tubs in each instance?

A. Yes, I took more pains with the hand dredge than I did with the air dredger to try to get it smooth.

Q. Yet, the result was, as I understand you, that practically all of your work was "B's?"

A. Yes, always had these little rolls and lumps in it from the hand dredge.

4 Q. Did you use the same powder, the same enameling powder, in this period you are just speaking of that you used the hand dredge as you did when you were using the air dredger on day turn? A. The same powder, yes.

Q. During the time you are speaking of sometimes you worked on day turn and sometimes on night turn? A. Yes.

Q. And you used the same powder but different kind of dredges?

A. Yes, the same powder but different dredges.

Q. With which dredge could you go over the article which you were enameling quicker? A. The air dredger. 1

Q. Is that any advantage?

A. The faster you get over it the better the powder will stick.

Q. Why is that, if you know?

A. With the hand dredge it takes you so long to go over it and you get tired once in a while, and by the time you got around to finish it up the iron is cold and the powder won't stick to it, while with the air dredger you get along quicker and the tub is still hot when you get through with it.

Q. Upon the question of making a good enameled article, what advantage is there in having the tub hot when you get through? 2

A. Because the powder sticks on there better and melts down quicker and smoother, where with the hand dredge it takes longer to melt down, and as I said before, you can't melt it smooth, the sides and corners would be rough, the ends would be rough and the sides smooth, because you would get more powder on the end than you would on the side—you can't get enough on the side, and while you are trying to melt down the ends the powder on the sides melts down too fast, as there is not enough on there to correspond with the end, and it forms rolls in the bottom of the tub, and sometimes on the sides of the tub. 3

Q. Is there any difference in the care you have to exercise in handling the tub while you are putting it into the furnace, whether you are using a hand dredge or using an air dredger?

A. You must take more care with the hand dredge.

Q. Why?

A. To keep the powder from falling off. The tub is cooler and it takes you longer to put it on with the hand dredge and the least little jar will make it fall off, but with the air dredger the powder sticks right to the iron while the iron is hot and it won't fall off, if you happen to butt it or anything like that. 4

Q. Did you ever do any chipping of enamel off of iron ware? A. No, sir, I have never done any of that.

Q. In the time recently that you were using the hand dredge at night, and then using the air dredger during the day time, did you use the same castings indiscriminately?

A. Yes, the same castings.

Q. That is when you were working both day and night?

A. Yes.

Q. Came to you in the same condition?

A. In the same way, yes, sir.

Q. Now, all the conditions being the same, the heat of your furnace and so on being the same, can you make a better bath tub with the air dredger or can you make a better bath tub with the hand dredge?

A. I can make a better bath tub with the air dredger.

Q. Can you make as good a bath tub with the hand dredge under any circumstances as you can with the air dredger? A. No, sir, you cannot.

Q. With which dredge do you keep the furnace busiest?

A. With the air dredger.

Q. Have you ever, when using the air dredger, been able to keep more than one furnace going?

A. I do not think we have tried it with the air dredger—you could, yes, sir, you could—

Mr. Noble: Mr. Stenographer, I do not think the witness understood my question, and I will ask that you repeat it.

(Question repeated.)

Mr. Noble: I suppose my question isn't clear, what I mean is this: can a man who is operating the air dredge utilize the heat of more than one furnace—in other words, can he put a tub in one furnace and let that get heated up, and in the meanwhile take a tub out of another furnace and enamel it, and then go back and take the tub out of the first furnace and enamel it with the air dredger?

Mr. Grosvenor: I object to the question, as the witness stated that he has never tried that method.

The Witness: I never tried it with the air dredger, and I do not think you could do it with the air dredger, because it melts down quicker and smoother. I do not think you could run both furnaces with the air dredger.

Q. You mean you wouldn't have time?

A. No, sir, you would not, but with the hand dredge you could do it. I have done it often with the hand dredge, put one tub in and heat it and work on the other, and by the time that is done I would work on the other one.

Q. In other words, you can get your tub in and out of the furnace much quicker with the air dredger? A. Yes. 1

Q. It takes longer to heat it with the hand dredge?

A. Yes, and longer to melt it down.

Q. As a skilled enameler, do you find that the proportion of pieces that you turn out with the air dredger of class "A" is greater than the proportion of tubs that you turned out of class "A" when you used the hand dredge?

A. It is greater with the air dredger.

Q. Is the wear better? A. It looks better.

Q. Is it better?

A. I should think so, it looks better and I think it lasts better. 2

Q. Is there any advantage in getting the enamel on even?

A. Yes, that is what makes it melt down smooth, getting the powder on even.

Q. Is there any advantage in getting it on thin as soon as you have the tub white?

A. Yes, the thinner you put it on the quicker it sticks to the iron.

Q. It fuses better, is that what you mean? A. Yes.

Q. Did you ever ask the foreman to take you off enameling and put you to firing when you were using the hand dredge? A. Yes, I asked him a couple of times. 3

Q. Why did you ask him that?

A. Because I would get played out, and I could not get the work out right with the hand dredge.

Q. Couldn't make good tubs?

A. No, sir, not with the hand dredge after I used that air dredger.

Q. But you could make them all right with the air dredger?

A. Yes, and I asked him a couple of times to take me off and put me to firing again. 4

Q. When you used the hand dredge? A. Yes.

CROSS EXAMINATION BY MR. GROSVENOR:

Q. You were working at night last week?

A. Sometimes, part night and part day.

Q. When did you work?

A. I worked from 4 in the afternoon until 10 at night.

Q. Six hours? A. Yes.

Q. Seven days? A. Last week.

Q. Every day last week? A. Yes.

Q. How about the week before?

A. I worked from 10 o'clock in the morning until 4 in the afternoon.

Q. And last week you used the hand dredge entirely?

A. No, sir, I used the air dredger until around 6 o'clock, half-past 5 or 6 o'clock, and from that time on I used the hand dredge.

Q. From 6 o'clock until 10 o'clock? A. Yes.

Q. Four hours? A. Yes.

Q. Let me look at your hand, have you got any blisters there (indicating the witness's hands)? A. Not now.

Q. Have you got any corns there?

A. No, sir, there are no corns there now, but you ought to have seen them when I had the hand dredge.

Q. You used the hand dredge last week?

A. But that wasn't many hours.

Q. Five hours a day? A. It was only four hours.

Q. That is half of a turn?

A. It is about half of a turn, yes, sir.

Q. Your hand is in good shape anyway, isn't it, now?

A. Yes, as long as I don't use the hand dredge.

Q. It is in good shape in spite of your using the hand dredge last week? A. For them few hours, yes, sir.

Q. How many enamelers were working at night at the same time you were last week?

A. Just working one furnace.

Q. You were the only enameler? A. Yes, at that hour.

Q. You are the head man and then you have a rim man and a wheel man, is that right? A. Yes.

Q. The week before you worked entirely with the air dredger? A. Yes.

Q. Do you remember what you made a day last week?

A. No, sir, I could not tell you that as I haven't got my book with me.

Q. You cannot remember that? A. No, sir.

Q. Do you remember what you got a day the week before?

A. Day work?

Q. Yes? A. Working by the day?

Q. You are paid, I suppose, by the piece? A. Yes.

Q. Last week you were working part day and part night, part with the hand and part with the air, do you remember what you got on any of those days?

A. Oh, yes, one day I got four "A's" and six "B's," I made ten tubs, and another day I got three "A's" and seven "B's"; it ran just like that. 1

Q. What is the difference between what you get on an "A" and what you get on a "B," 7 cents?

A. Seven cents on the five foot tub, and 9 cents on the 5½.

Q. The week before you used the air dredger entirely?

A. Yes.

Q. Do you remember what "A's" and "B's" you got then?

A. Ten "A's" out of eleven tubs or nine "A's" out of eleven tubs. 2

Q. The standard of inspection is the same both for last week and the week before that? A. What do you mean?

Q. I mean what was an "A" tub last week was an "A" tub the week before? A. Yes, the same thing.

Q. So if a tub was good enough to be an "A" last week it was good enough to be an "A" the week before that?

A. Yes.

Q. Then some of the tubs you made under the hand method were just as good as some of the tubs you made under the air method? A. No, sir.

Q. They were class A? 3

A. If they have just a small roll or lump in them, the inspector might take pity on you and give you an "A"?

Q. And you mean to say that you never really got an "A" with the hand dredge?

A. No, sir; you would not. The inspector don't want to give you all "B's" and he allows you "A's" sometimes.

Q. Do you know anything about these experiments which the last witness testified to? A. No, sir.

Q. Did he ever tell you why he made you use the hand dredge instead of the air dredger last week?

A. No, sir, he did not. 4

Q. This long-handle dredge, when you are using it, you can stand just as far away as with the automatic dredger, can't you?

A. With the long-handle dredge—yes, sir.

Q. When this air dredger is turned off you can at once start working with the long-handle dredge, can you?

A. Yes, sir.

Q. You can then make enameled ware with the hand dredge? A. If the air is turned off, yes.

1 Q. Have you ever been in any other factories?

A. When McShane's was running I would stand outside and look into the window, that is all.

Q. Did you ever know anything about the making of enameled powder? A. No, sir.

Q. Is that higher-paid work than the enameling?

A. I couldn't tell you that; before I worked on the furnace I was in the mixing room helping sieve the chemicals that they have there, but I don't know anything about the mixing.

Q. You did not determine the proportions? A. No, sir.

2 Q. Who did do that?

A. When I first went there Mr. Weiskittel did that.

Q. Senior?

A. The old man is dead, Mr. Anton Weiskittel.

Q. When did Senior die? A. He has been dead long ago.

Q. Aren't there two Weiskittels there today?

A. The senior Weiskittel has been dead long ago and this is Anton Weiskittel, Junior.

Q. Who is the president today?

A. Anton Weiskittel, Junior.

Q. Who is the other Weiskittel in the business today?

3 A. Harry Weiskittel.

Q. What is he, is he the nephew?

A. No, he is a brother.

Q. How many furnaces have you working now in the daytime? A. One tub and one small ware.

Q. How many do you have at night?

A. The same thing; the same two furnaces run day and night.

Q. Is there an enameler attending to the small ware at night? A. Yes, sir.

Q. While you attend to the tubs?

4 A. Yes, sir; there are two furnaces, one for the small ware and one for the tubs.

Q. Then there is no change now as between day and night in the number of furnaces that you operate? A. No, sir.

Q. But in the day time the air dredger is used and at night the hand dredge is used, is that right? A. Yes, sir.

Q. When did you begin to use this air dredger?

A. Last summer; some time last summer; I cannot tell you the exact date.

Q. Do you know anything about the making of cast iron? 1
A. No, sir.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Have you complained to the foreman about the use of the hand dredge during these recent times that you have been using it?

Mr. GROSVENOR: Objected to as immaterial.

A. I have complained about the hand dredge; yes, sir. I wanted the air dredger.

Q. Did you complain about using the hand dredge? 2
A. Yes, sir.

Q. Why?

A. Because it tired me out and I could not make no good tubs with it, not as good as I could with the air dredger.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What did he say when you complained to him?

A. He did not say anything; he said, Oh, we will have the air again; that was all.

Q. Did he tell you that it was more economical to use the hand at night? A. No, sir; that is all he told me. 3

Q. How many furnaces are there at Weiskittel's?

A. There are just them two running, but when they are busy they have two tub furnaces running.

BY Mr. NOBLE:

Q. How many small ware furnaces?

A. The same amount; and when they are busy they have two running.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 4

JOSEPH B. LE BRUN, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please give your full name.

A. Joseph B. Le Brun; 3318 Canton avenue.

Q. Where are you employed?

A. A. Weiskittel, Son & Company.

Q. What is your work there? A. Enameler.

Q. How long have you been with the Weiskittel Company? A. Four years.

Q. What kind of ware do you enamel?

A. Bathtubs.

Q. Have you ever enameled small ware? A. No, sir.

Q. About how long have you been enameling bathtubs?

A. About eight months.

Q. About eight months? A. Yes, sir.

Q. Did you ever use the hand dredge? A. Yes, sir.

Q. Was the dredge which you used similar to Exhibit No. 279? A. Yes, sir.

Q. Did you ever use the short-handle hand dredge like Exhibit No. 278?

THE WITNESS: This one (indicating)?

Mr. NOBLE: Yes.

A. No, sir.

Q. Which dredge do you find is the easier on you, the long-handle hand dredge or the pneumatic dredger?

A. The air dredger.

Q. Why?

A. Because I make better work and it don't exert me as hard; that thing there, when I use that it plays me out so here (indicating) that I cannot hardly use it; it plays me out here (indicating wrist).

Q. Does the use of the Arrott or air dredger tire you as much as the old hand dredge? A. No, sir.

Q. With which dredge can you make the better ware?

A. The air dredger.

Q. Why?

A. Because I can put the enamel on the tub smoother; it melts down nicer; I do not have to put as much on and

it is quicker work and the powder is finer when it comes through the air dredger than through the hand dredge. 1

Q. Is the mesh on the air dredger finer than it is on the hand dredge? A. Yes, sir.

Q. When you were using the hand dredge how many hours were there in a turn? A. Eight hours.

Q. How many tubs could you turn out in a turn of eight hours with a hand dredge? A. Ten or eleven.

Q. In turning to the Arrott dredger or air dredger, how many tubs could you turn out in a turn of eight hours with that dredger?

A. Thirteen or fourteen, and sometimes fifteen. 2

Q. With which dredger would you get the greater number of class A tubs? A. With the air dredger.

Q. What would you say was about the average of the tubs you turn out with the hand dredge in a turn of eight hours?

THE WITNESS: A's and B's.

Mr. NOBLE: No, the total number.

THE WITNESS: How many?

Mr. NOBLE: Yes, the average number you would turn out.

THE WITNESS: Do you mean how many tubs I could turn out in eight hours? 3

Mr. NOBLE: Yes.

A. Ten or eleven.

Q. That was an average? A. Yes, sir.

Q. Out of that ten or eleven tubs, please state what was the average number of A's that you got and what was the average number of B's?

A. Sometimes I got all B's and no A's, and sometimes I got a couple of N. G's.

Q. They were no good entirely? 4

A. Yes, sir; and had to be chipped off.

Q. Now, taking the Arrott dredger, of the 14 or 15 tubs which you usually turned out with that, how many A's would you get?

A. Eleven, twelve and thirteen—it has not been over a week that I made 50 tubs and got 45 A's.

Q. With the air dredger? A. Yes, sir.

Q. Did you ever do as well with the hand dredge?

A. No, sir; couldn't expect to.

Q. Could you ever make as good a tub with the hand dredge as you can with the air dredger? A. No, sir.

Q. When using the hand dredge how does the powder come out of the sieve?

THE WITNESS: How does the powder come out of the sieve?

Mr. NOBLE: Yes.

A. Well, it comes out coarse; as you beat it, it comes just as you beat it.

Q. It comes out in puffs?

A. Yes, sir; just as the smoke comes out of a smoke-stack in the engine; and it comes finer with the air dredger; but with the hand dredge it comes out coarser and you can see it laying there; with the air dredger it melts down smoother than with the hand dredge.

Q. With the hand dredge did you ever have any difficulty in getting the powder on the tub just where you wanted it?

A. Yes, sir; sometimes the tub would lay like that (indicating), and you would go over it that way and there would be a streak up here (indicating) where you would not get any powder, and if I come along here to put it on there, there would be a streak along here (indicating); but with the air dredger you can come around and get it on as nice as you please.

Q. That is with the air dredger?

A. Yes, sir; with the hand dredge you leave a lump; I could not beat it hard enough to get it on there without a lump.

Q. But with the air dredger can you do that?

A. Yes, sir; it is very seldom that you get a lump in it.

Q. During the last few weeks have you worked any on night turns? A. Yes, sir.

Q. And have you used the hand dredge on any of those night turns that you worked? A. Yes, sir.

Q. You were enameling bathtubs at that time?

A. Yes, sir.

Q. During the same time that you used the hand dredge upon the night turns did you also work day turns and use the air dredger? A. Yes, sir.

Q. Did you use the same enameling powder at those times? A. I did, to the best of my knowledge.

Q. And did you use the same castings indiscriminately?

A. Yes, sir. 1

Q. What kind of ware were you able to turn out with the hand dredge during these recent weeks?

THE WITNESS: What kind of ware?

Mr. NOBLE: Yes.

A. It wasn't much of anything.

Q. What was the matter with it?

A. It was full of rolls and lumps and wavy, and you could not get it to melt down smooth.

Q. During the day time, while working with the air dredger, did you have the same difficulty?

A. No, sir; not with the air dredger. 2

Q. The man who inspects the ware, whether you make it at night or in the day turns, is the same man, is he not?

A. Yes, sir; the same man.

Q. Does he know, except from the appearance of the tub, whether it is made with the air or the hand dredge?

A. I suppose he does; yes, sir.

Q. How do you mean?

A. I expect he knows it; he knows who is working with the hand dredge and who ain't.

Q. With which dredge can you make the most money?

A. With the air dredger. 3

Q. With which dredge does your employer lose the more tubs? A. The hand dredge.

Q. Your employer, then, when you are using the air dredger, as I understand you, gets better ware as a result of your work?

A. Yes, sir; he gets better ware and I get more money.

Mr. NOBLE: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You say you have been working about eight months out there? A. Yes, sir. 4

Q. All the time as an enameler?

A. Enameling about eight months; yes, sir.

Q. Did you start in as enameler as soon as you went to the factory? A. No, sir.

Q. But you have been an enameler for eight months?

A. Yes, sir.

Q. You enameled some months, then, by the hand method? A. Yes, sir.

1 Q. How long did you enamel by the hand method, do you recall? A. Not long.

Q. Now, are you on the day turn or night turn now?

A. I am on the day turn now; I go to work at ten o'clock in the morning.

Q. Last week were you on the day turn?

A. I was on from four in the morning until ten in the morning.

Q. Then you were on a different shift from Mr. Goldsmith? A. Yes, sir.

Q. Though you were on a different shift from him, still
2 on part of your turn you also used the hand dredge, is that right? A. Yes, sir.

Q. And you were making bathtubs? A. Yes, sir.

Q. By the hand dredge? A. Yes, sir.

Q. How long have you been using the hand dredge this way? A. Since 1911.

Q. Since the beginning of the year?

A. Yes, sir; there are four gangs on the one furnace; that is, in this new year.

Q. Before that they had two furnaces running?

A. They had two furnaces; yes, sir.

3 Q. You say the same inspector inspects the tubs made both by hand and by air, is that right? A. Yes, sir.

Q. Part of your shift you are working by hand and part by air last week?

A. Yes, sir; this week I have all air, from ten in the morning until four in the evening.

Q. Suppose you go into your store room or warehouse or factory now, could you pick out the tubs that were made by hand and those by the air dredger?

A. I don't know that I could pick out all, but some of them.

4 Q. Those that were the handsomest you would say were made by air? A. Yes, sir.

Q. And those that were made the least handsome you would say were made by the hand dredge? A. Yes, sir.

Q. And that is the only way you could tell?

A. I could pick some out but not all; sometimes you get a very good one made by the hand dredge.

Q. Has there been any change in your factory in the enamelers since the first of the year?

THE WITNESS: In the enameling room?
Mr. GROSVENOR: Yes.

A. No, sir.
Q. You are the first enameler? A. Yes, sir.
Q. Who is your rim man? A. Anton Arnold.
Q. He uses the hand dredge, I suppose? A. Yes, sir.
Q. Who was the wheel man? A. William Williams.
Q. And last week you worked from 4 to 10? A. Yes, sir.
Q. Who went on at ten o'clock in the morning?
A. A man named Charlie Norbrook.
Q. He was an enameler? A. Yes, sir.
Q. And who else?
A. George Keller; that is his forker; that is the rim man or second man.
Q. Who was the wheel man?
A. The man that I had was his wheel man part of the time.
Q. And they worked—

Mr. FISHER: From 4 to 12—eight hours.
THE WITNESS: Yes, sir; there are only three hours; the fireman makes eight hours.

BY Mr. GROSVENOR:

Q. Mr. Arnold worked in the afternoon?
A. Yes, sir; he worked with me.
Q. Who else?
A. Mr. Norbrook who comes on when I go off.
Q. And he works from 10 to 4?

THE WITNESS: This week, you mean?
Mr. GROSVENOR: No, last week.

A. Yes, sir.
Q. Who is the next enameler?
A. Goldsmith is after Norbrook.
Q. Then the four enamelers were yourself, Norbrook and—
A. And Sullivan.
Q. Are those the only members out there?
A. There are more out there, but there are only four gangs working on the furnace.
Q. Have you ever worked at any other factory?
A. No, sir.

1 Q. Did Mr. Fisher say anything to you about experiments?

THE WITNESS: About experiments?
Mr. GROSVENOR: Yes.

A. No, sir.

Q. What did you understand was the reason why you were not allowed to use the Arrott dredger, that is the air dredger, about the beginning of the year?

A. That I couldn't tell you; I don't know anything about that.

2 Q. No reason was given?

A. No, sir; I done my work as I was told, and that is all I knew.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM BODINE, a witness of competent age, produced on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

3

Q. Give your full name and address?

A. William Bodine, 607 Fifteenth Street.

Q. What is your business? A. Enameler.

Q. Where are you employed? A. A. Weiskittel & Son Co.

Q. How many years have you been there as an enameler?

A. Altogether, nine years.

Q. During that time what kind of ware have you enameled? A. Bathtubs.

Q. Have you enameled any other kind of ware?

A. I have enameled small ware, very few of it, though.

4 Q. Your enameling work is chiefly upon bathtubs?

A. Yes, sir.

Q. Is that right? A. That is correct.

Q. Did you ever use the short-handle hand dredge similar to Exhibit No. 278? A. Yes, sir; on small ware.

Q. On small ware? A. Yes, sir.

Q. Did you ever use the long-handle hand dredge similar to Petitioner's Exhibit No. 279? A. Yes, sir; on bathtubs.

Q. And have you used the Arrott or air dredger?

A. Yes, sir; I have on tubs.

Q. About how long ago did you commence using the air dredger on bathtubs? A. Along about in June. 1

Q. What year? A. 1910.

Q. Will you just tell me, take that Exhibit No. 278, will you please—that is the short-handle hand dredge; you say you used a dredge similar to that on small ware? A. Yes, sir.

Q. For how long did you use a dredge like that?

A. I did not use it long, only about a week or so, only a few days.

Q. How did you hold it? A. Like this (indicating).

Q. Held it in your left hand with the end of the handle under your elbow? A. Yes, sir. 2

Q. And what did you hold in your right hand?

A. A beater.

Q. With the right hand you beat the handle?

A. Yes, sir.

Q. For the purpose of making the powder go through the sieve? A. Yes, sir.

Q. Did you have any difficulty beating that beater?

A. Yes, sir; with my left arm and wrist and shoulder.

Q. What was the matter with them?

A. They were strained.

Q. And how about your hand? 3

A. It got played out and I could not use it.

Q. Could you make as good ware with that as with the Arrott or air dredger? A. No, sir; I could not.

Q. Could you make as much ware?

A. No, sir; I could not.

Q. Take Petitioner's Exhibit No. 279, which is the long-handle hand dredge; how did you guide that dredge?

A. That was supported there by a chain, a swinging chain.

Q. And you held the end of it how?

A. Just about here (indicating). 4

Q. That is to say under your left arm up against your body? A. Yes, sir.

Q. How did you guide it?

A. Partly with the arm and partly with the body.

Q. You guided it over the article which you were enameling with your left hand and your body? A. Yes, sir.

Q. How did you get the powder out of it?

A. With this beater.

Q. Beating it with the right hand?

1 A. Yes, sir; with the right hand.

Q. Did you have any difficulty operating that dredge?

A. Yes, sir; I did.

Q. What were the difficulties?

A. My wrist was strained and there was a strain on the shoulder.

Q. Which wrist are you talking about?

A. The right one.

Q. That is the hand in which you held the beater?

A. Yes, sir.

Q. Could you always put the enamel on the article just
2 where you wanted it when you used the hand dredge?

A. No, sir; could not.

Q. Could you make as good enamel ware with that as you could with the Arrott dredger? A. No, sir.

Q. Please take Petitioner's Exhibit No. 280, which is the Arrott dredger and tell me how that is operated?

A. This way (indicating).

Q. In other words you held it with your left hand back on the end of the handle where the valve is and your right hand extended forward? A. Yes, sir.

Q. Did you have any greater freedom in the use of that
3 dredger than you did with the old long-handle or short-handle hand dredge?

A. Yes, sir; with this dredger here.

Q. Exhibit No 280? A. Yes, sir.

Q. Tell us how it was that you could use that more freely?

A. Well, it was more easy on you and it comes more handy to you and it beats the powder out here and you do finer and smoother work.

Q. Does it give you any advantage in having both hands free? A. Yes, sir; sure it does.

Q. Which dredger has the finer mesh? I say do you
4 know which dredge has the finer mesh, the hand dredge or the Arrott dredger? A. The air dredger.

Q. The air dredger has the finer mesh? A. Yes, sir.

Q. Did you have any difficulty getting the enameling powder out of the hand dredge? A. Yes, sir.

Q. Tell me what those difficulties were?

A. It was packed down in there and you could not drive it through.

Q. That is it packed down in the dredge and you could

not hit it hard enough with your right hand to get it through, 1
is that right? A. That is right.

Q. Would you get it on the article that you were enameling smoothly? A. Not with the hand dredge, no, sir.

Q. How would it fall on the article you were enameling?

A. It would be all wavy, lumpy, and when you melt a tub down it was all in rolls on the side of it, or curtains.

Q. What do you mean by a curtain?

A. Where the powder laps over and runs down, that is, thicker one place than another.

Q. Is it any advantage to get the powder on the article you are enameling of an equal thickness all the way over? 2

A. Yes, sir.

Q. What advantage is it?

A. It fuses better and makes a better piece of ware and it melts down quicker.

Q. Suppose an enameled article which had the enamel on it thick and thin in places, was struck a blow, what would be the effect of that?

A. Well, the thick part would be liable to spring off.

Q. Did you ever do any chipping of enamel?

A. Yes, sir; I am a chipper now.

Q. Which do you find easier to get off, that which is put 3
on thick or thin? A. That which is put on thick.

Q. Which do you find easier to get off, that put on with the hand dredge or the air dredger?

A. That put on with the hand dredge.

Q. How long did it take you to learn to use the air dredger? A. Oh, only a day or two.

Q. Did you experience any of those difficulties, such as your arm being tired out or your wrist being tired out after you began using the air dredger? A. No, sir.

Q. Which dredge is the easier for a man to use?

A. The air dredger. 4

Q. With which one can you turn out the most ware?

A. With the air dredger.

Q. When you were working on the hand dredge how many hours were there to a turn? A. Eight hours.

Q. How many tubs did you make with the hand dredge in a turn of eight hours? A. Ten or eleven.

Q. Averaged about ten or eleven? A. Yes, sir.

Q. After you began to use the air dredger, after that was

1 introduced in the Weiskittel works, how many tubs could you turn out on a turn of eight hours?

A. Between fourteen and sixteen, tubs, with the air dredger.

Q. Now, with the ten or eleven that you could make in a turn of eight hours with the hand dredge, how many would there be A tubs and how many B tubs, as an average?

A. Well, the most of them were B's.

Q. How about that with the air dredger?

A. With the air dredger it was different altogether; you would get most of them A's. I have made all A's already
2 with the whole day's run.

Q. Did you ever do that with the hand dredge?

A. No, sir.

Q. Do you believe that you could make as good a tub with the hand dredge as you can with the air dredger?

A. No, sir.

Q. Which one do you make the most money out of?

A. The air dredger.

Q. With which one can you get over the article that you are enameling more quickly? A. With the air dredger.

Q. Is that any advantage, to be able to get over the ar-
3 ticle quickly?

A. It fuses to the iron quicker and you can put the tub back while it is hot yet and it won't get cool and you have to heat it up again.

Q. That is to say, when you use the air dredger you can get over your tub more quickly, and your enameling powder fuses to the iron more quickly with the air dredger; is that correct? A. Yes, sir; it is correct.

Mr. GROSVENOR: That is very leading.

Mr. NOBLE: I know it is. Do you offer that as an objection.

4

Q. With the air dredger is your tub hotter or colder at the end of putting on your coat than it is when using the hand dredge? A. Yes, sir; it is hotter.

Q. And that enables you to get it back in the furnace quicker, doesn't it and you do not lose the heat?

A. No, sir.

Q. Is there any advantage in getting it back in the furnace quicker? A. Yes, sir.

Q. What is it?

A. It melts down smooth and you make more time by it. 1

Q. That is, you use the furnace more? A. Yes, sir.

Q. And you make more tubs? A. Yes, sir.

Q. And you make better tubs? A. Yes, sir.

Q. What do you attribute that to, your ability to work faster and so on? A. Why, you make more money by it—

Q. Well, what do you attribute it to?

THE WITNESS: I don't understand that.

Q. How does that come about, that you can do that now better than you could when you used the hand dredges?

THE WITNESS: That is the putting of the tub in 2 quicker?

Q. How are you able to get over the tub quicker and get it back in the furnace quicker and so on?

A. You take the air dredger and the powder comes out in a smoother flow and you get over the tub quicker with the air dredger and you get it back quicker.

Q. So you attribute this improvement that you have spoken of to the air dredger? A. Yes, sir.

Q. Are you as tired at the ending of a turn, when using the air dredger, as you used to be when you used the hand dredge? A. No, sir. 3

Q. What is the difference?

A. My arms are not played out then.

Q. Did you have to lay off when you used the hand dredge? A. Yes, sir.

Q. How about since you use the air dredger?

A. That is all right; I never do get tired with that.

Q. Would you be physically able to do the work right straight along if you went back to the use of the hand dredge?

Mr. GROSVENOR: I object to that question. The 4 witness testified that he was nine years using this hand dredge.

Q. Suppose for example, Mr. Bodine, Mr. Weiskittel were to abandon the use of the air dredger, how would you feel about going on working there and using the hand dredge?

A. I would ask for another job.

Q. Have you during the last few weeks worked any on night turns? A. No, sir; I have not.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Have you used the hand dredge since January, 1911, on any of your ware?

A. No, sir; I have not; I have been off ever since Christmas and working around odd times.

Q. I couldn't hear you, what was that?

A. I have been off ever since Christmas.

Q. You have not been enameling since Christmas?

A. No, sir.

Q. Have you not been at work?

A. Yes, sir; chipping off some work done there.

2 Q. Did you know the hand dredges were used at night since early this year?

A. Only what I heard.

Q. What did you hear?

A. I am not there at nighttime, only in the daytime.

Q. Did you hear in the daytime that they were being used at night? A. Yes, sir.

Q. You have testified to a great many advantages that this air dredger has over the hand dredge; have you not?

A. Yes, sir.

Q. In view of those advantages, don't you think it strange

3 that the Company should ask the men to use the hand dredge at night?

Mr. NOBLE: I object to the question. The witness is not within the confidence of the Company. It is not proper cross examination, and it is irrelevant and immaterial.

A. I don't know anything about it.

Q. It is something you don't know anything about?

A. No, sir.

Q. What do you mean by chipping enamel, breaking up

4 defective tubs?

A. Yes, sir; chipping the enamel off.

Q. So they can be sent back to the cupola? A. Yes, sir.

Q. So they can be used again?

A. Yes, sir; so they can be re-enameled.

Q. You make different grades of tubs, don't you?

A. Yes, sir.

Q. Some five year tubs? A. Yes, sir.

Q. Those are considered your best tubs, aren't they?

A. I couldn't say that. 1

Q. You put more enamel on your best tubs than you put on your cheap tubs?

A. We endeavor to make them all good.

Q. But in the trade some tubs sell for more than others, and some are larger and heavier and more substantial?

A. Yes, sir.

Q. Aren't those heavier tubs more thickly coated with enamel than with the cheaper and lighter tubs? A. No, sir.

Q. It is not so? A. No, sir.

Q. Were you in the factory when they made the dredges last summer? A. Yes, sir. 2

Q. Who made them, do you remember?

A. I believe Mr. Fisher.

Q. He made them? A. Yes, sir; I believe he did.

Q. Do you know anything about the making of the powder? A. No, sir.

Q. Or the mixing of the cast iron? A. No, sir.

Q. Or the foundry work? A. No, sir; I do not.

Q. Your duties have been confined to that of using the dredger, is that it? A. That is all.

Q. And as they are not now necessary there, you are simply chipping off the enamel? A. Yes, sir. 3

Q. You enameled the tubs with the hand dredge for nine years, did you not? A. Yes, sir; practically nine years.

Q. And in all that time your long handle dredge was supported by a chain, was it? A. Yes, sir; supported by a chain.

Q. You never tried to dredge bathtubs with this dredge (indicating Exhibit No. 278) which was not supported by a chain, did you? A. No, sir; only on the small ware.

Q. On the small ware you used the Arrott without the weight?

A. Yes, sir; but we have only been using those for a couple of years. 4

Q. Today you use the large Arrott dredger for your bathtubs and a small Arrott dredger for your small ware?

A. Yes, sir.

Q. The only difference in doing the small ware today, that is as far as the weight is concerned, is that with the Arrott dredger you use two hands for the weight and with the little hand dredger you held it up with one hand?

A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

1 RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. This ware you are chipping is defective ware, is it not? A. Yes, sir.

Q. What do you chip the enamel off for?

A. So that it can be enameled over again.

BY Mr. GROSVENOR:

Q. And this ware you are breaking up is ware made from day to day?

A. No, sir; it is ware standing over in the warehouse for the last eight or nine or ten years; it has been standing in
2 the warehouse and was made with the hand dredge.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: Counsel for Defendants announces that he must be in New York tomorrow for the trial of a case, but he hopes to be able to go on again on Friday, and if counsel for the Government will permit him he will notify him on Thursday of the prog-
3 ress of the case.

Mr. GROSVENOR: Counsel for the Government will be quite ready to go on Friday, if it is agreeable to counsel for the Defendants, if he is advised by Thursday night.

Counsel for the Government wishes that the witness Fisher be called for further cross examination in respect to the comparative wages paid during the month of January and February, 1911, to the workmen working with the hand dredge and the Arrott dredger. During the cross examination this morn-
4 ing, counsel for the Government asked that the witness produce certain reports that he testified were made under his direction and that of his Assistant Foreman, being daily reports and which were turned over to the Secretary of the Company. I asked him to produce them, and my understanding of the record is that it was stated by counsel for Defendants that, not being in his possession, he could not get them. Thereupon Mr. Heise, the Secretary, was subpœnaed to produce them and now has them in Court and the

witness Fisher, now being in Court, I ask counsel for leave to examine on cross examination, the witness Fisher. 1

Mr. NOBLE: Counsel for Defendants wishes to state that the cross examination of the witness Fisher was completed by counsel for the Government, and counsel for Defendants will state that the record will show that Mr. Fisher said that the reports to which he referred were daily reports. He has the means at hand for ascertaining those facts, and counsel for Defendants again states that he has no objection to putting Mr. Heise on at this time. 2

THE EXAMINER: It seems to me that the only question for the Examiner to decide, as the matter is presented, is as to whether Mr. Fisher shall be further cross examined. The record seems to show that the right to further cross examination was reserved. Aside from that—

Mr. NOBLE: Where was it reserved, at the end of the examination?

THE EXAMINER: No, during the course of the examination. Further, if counsel for the Government requests Mr. Fisher to take the stand for further cross examination and counsel for the Defendants objects, I should say that the Examiner would be going outside of his province if he attempted to overrule or sustain the objection. 3

Mr. GROSVENOR: In other words, he takes the stand and we go on and the court rules afterward?

THE EXAMINER: Yes, sir; that is how I understand it.

Mr. NOBLE: Counsel for Defendants desires to state again, as he has done repeatedly that the reports that Mr. Grosvenor has subpœnaed the production of are here in court in the possession of an officer of the Weiskittel Company. They are not in the possession of the witness, Mr. Fisher. Mr. Grosvenor has stated that he wants to cross examine Mr. Fisher in respect to those records. Now, counsel for the Defendants points out again that if the Government desires the records which they have subpœnaed the production of, they must have them produced in the regular way and take the consequences of their production as to 4

whatever rights the production of them may give the officers of the Weiskittel Company.

Mr. GROSVENOR: Will you take the stand, Mr. Fisher?

CHARLES A. FISHER, a witness heretofore produced and sworn on behalf of the Defendants, recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. On cross examination this morning I asked you about printed records of tubs and other enameled ware, produced at your factory during the last six weeks? A. Yes, sir.

Q. And during the period of experiment; do you recall that? A. Yes, sir.

Q. You said you had kept the daily reports—

Mr. NOBLE: Let the witness testify.

THE WITNESS: I did not say I kept the records.

Q. Wait a minute; let me finish my question. You make out the record? A. Yes, sir.

Q. And then you turn it over? A. Yes, sir.

Q. In using the term "keeping the record" I mean the same as if you said you kept a diary; you did make out a record during these days?

A. There was a record made out and I signed it and turned it over.

Q. To whom? A. To Miss Dorsey, our clerk.

Q. Whose office is she in?

A. A Weiskittel & Son Company's.

Q. Who is at the head of the office?

A. I presume Mr. Heise.

Q. Don't you know? A. I said I thought Mr. Heise.

Q. This afternoon, have you seen those records in Court?

A. No, sir.

Q. Have you seen any records of the products—

A. I have seen no records such as you asked me about this morning in court today.

Q. What are those records which you saw in court this afternoon and respecting which you have heard counsel for both sides have some altercation?

A. They are not daily reports; that is all I can say about

them. I have not seen a daily report in court today. Every daily report that goes through my hands is signed by me, endorsed by me; first it is signed by the inspector and then passed over to me and then I endorse it and hand it in to the office. 1

Q. Aren't those sheets the tabulated sheets by the week or men with the days of the week and the names of the workmen all in columns, so as to show the comparative output of the workmen for those days? A. Not all of it.

Q. Shows part of it? A. Yes, sir.

Q. Those sheets were then made up from those daily reports? A. Made up by my own hand. 2

Q. These reports were made up, then, from your reports?

A. Not from my reports.

Q. What are those reports, then, which you have seen in court? A. They are weekly reports.

Q. These are weekly reports made up at the office from your daily reports?

A. They are made up by me; yes, sir; some of the ware, though, is not on those sheets.

Q. What are made up by you, are the weekly reports made up by you?

Mr. NOBLE: I object to counsel for Government having by his own act subpœnaed the production of the papers in court and attempting to obtain their contents in some other way. If he wants that evidence produced he must produce it in some other way. 3

Mr. GROSVENOR: What is the question?

The question referred to was then read by the stenographer.

Mr. GROSVENOR: Will you answer that question?

A. Well, the weekly sheets are made up by me. They are not reports. I do not consider them reports and we do not call them reports. You may call them reports, but I do not. 4

Q. Are these things which you saw in court the weekly reports that you make up?

A. You may term them weekly reports.

Q. Do you make them up? A. Yes, sir.

Q. You make up these sheets, then? A. Yes, sir.

Q. And you turn them over to Mr. Heise? A. Yes, sir.

1 Q. What is the difference between these and the daily reports which I asked you about?

A. Well, the daily reports are different reports altogether from that.

Q. Yes, but how different?

A. It has it all down, and every man and the time he works and everything else, the kind of material he uses and all.

Q. This has everything that your daily report has?

A. No, sir.

Q. What does your daily report have that this does not
2 have?

A. The amount of fuel, the enamel, the time or anything else, and therefore it would be impossible for me to sit here and tell you what men worked at night and what men worked at day, unless I went over the sheet carefully and traced the time back.

Q. Could not teil from those sheets who worked at night and who worked during the day?

A. I could judge, but I would not go on record for it; as I told you before, I came up here to speak the truth and that is all I am going to tell.

3 Q. That is all we want you to tell. Now, what sheet will tell you who worked at night and who worked during the day from the first of January, 1911?

A. The sheets that we spoke of this morning.

Q. Would the pay roll books show it?

A. The pay roll books would not show the production of the furnace, no, sir.

Q. Is the amount that the workman gets based at all on the amount of material that they use or the time that they work? A. No, sir.

Q. It is just the output that comes from them?

4 A. It is just the output, the production.

Q. These sheets would not show that?

A. These sheets would show what they draw, I presume. I do not figure the amount of pay. I simply put down that they are to be paid for.

Q. In other words, you inspect? A. No, sir.

Q. Your superintendent inspects?

A. I have an inspector and he makes out the sheet with his signature to it and passes it over to me, and I endorse it and pass it into the office.

Q. Then, that determines what he gets? 1

A. Those sheets in court determine what he gets, but the production of the furnace is not on them sheets.

Q. If all you have to tell in determining how much a workman is to be paid—if all you have to consider is in the output, what is the need of these sheets to determine how much he is going to get?

A. I tell you these sheets will tell you that, but you asked about the daily production sheets; that is what you asked me for, if I understood you right, and not the weekly production sheets. I don't know if I understood you right or not, but I think I did. You asked for the daily production sheets. 2

Q. Let me ask it again and make it clear. You testified this morning that you made certain experiments, as you call them, in the use of the hand dredge? A. Yes, sir.

Q. And it developed on cross examination that those experiments were largely done at night? A. Yes, sir.

Q. You testified on direct examination that on the experiment, users of the hand dredge did not make as much money as the other men did— A. I certainly did.

Q. Using the air dredger— A. Yes, sir.

Q. Just wait; you have testified that the men using the hand dredge one turn did not make so much as they made 3 on another turn that is, the same men working with the air dredger? Now, the sheets that I want to get are the sheets that will enable me to determine from your written record what the disparity is, if any, in respect to which you testify?

A. Well, the sheets here (indicating) have no time on them.

Q. Where will that be, that I want to know?

A. That will be on the daily production sheet, because each man's time it put on there, the time he starts to work and the time he stops. I would have to guess at these. The men making the most money I would have to say, Well, to 4 the best of my knowledge, that man worked with the air dredger; now, you don't want any such evidence as that, I don't think.

Mr. GROSVENOR: I have just a few questions to ask you.

Mr. NOBLE: Well, I will have to go now. I made it perfectly clear that I had this engagement in New York.

1 A. I am president of the Colwell Lead Company.

Q. And have been for how long? A. About six years.

Q. And you are a director of the company, are you not?

A. I am a director of the company.

Q. And the active head of the company?

A. That is correct.

Q. Who is the secretary of the Colwell Lead Company?

A. Bert O. Tilden.

Q. How long has he been secretary of the Colwell Lead Company?

A. Well, I should say about five years, maybe six.

2 Q. Has he any active duties to perform in connection with the affairs of the company? A. None.

Q. What are his duties?

A. In connection with the company?

Q. Yes.

A. Why, none, really. He attends a board meeting occasionally and an annual meeting. He has rather a position of convenience.

Q. He executes any official papers which may require his signature as secretary, and attests the seal of the corporation? A. Yes, but that is very rarely.

3 Q. What is his business outside of his connection with the Colwell Lead Company?

A. He is president of the American Sanitary Works Manufacturing Company.

Q. Isn't it a fact that he devotes practically all of his attention to that business, and little, or none, to the Colwell Lead Company?

A. Yes, he devotes all of his time to that business.

Q. Has he at any time in the last two or three years, or more, had anything to do with the manufacture, or sale, of sanitary enameled iron ware in his connection with the Col-

4 well Lead Company's business in that respect?

A. Nothing at all.

Q. You are one of the defendants in this bill in equity filed by the United States of America against the Standard Sanitary Mfg. Co., *et al.*, defendants, in the United States Circuit Court for the District of Maryland? A. I am.

Q. And Mr Tilden is also a defendant in this suit? A. Yes.

Q. And the Colwell Lead Company is also a defendant?

A. It is.

Q. The Colwell Lead Company, yourself and Mr. Tilden are also defendants in the criminal proceedings in the United States District Court in Detroit, brought by the United States Government on the same general subject matter as that referred to— 1

Mr. GROSVENOR: I do not see the materiality of that question.

Mr. HONEYMAN: I simply want to identify the parties with these suits. I have not quite finished my question.

Q. —in this bill in equity. A. That is correct. 2

Q. Both the bill in equity and the criminal proceedings are based upon an alleged violation of the Sherman Act, are they not? A. I presume so.

Q. That is your understanding?

A. That is my belief, yes.

Q. Now, state the business of the Colwell Lead Company.

A. Why, the Colwell Lead Company is a manufacturing jobbing concern. Our jobbing business is the principal part of the business.

Q. You are jobbers of what?

A. Plumbing supplies of all kinds: brass goods, earthenware, porcelain ware, etc. 3

Q. And also lead and iron pipe?

A. Yes, everything that a plumber may use.

Q. What do you manufacture yourself?

A. We manufacture cast iron enameled ware and cast iron soil pipe.

Q. Where do you manufacture these goods that you have just mentioned? A. At Elizabethport, N. J.

Q. Other than these two articles that you have just mentioned you are strictly jobbers, that is you buy what you sell?

A. Our total manufacturing amounts to about $200,000 annually, and our jobbing business amounts to about two million. 4

Q. Do you manufacture all of the enameled iron ware that you sell?

A. We manufacture about half of the enameled iron ware that we sell.

Q. You manufacture half of what you sell?

A. That is correct.

Q. You sell to the plumbers direct, do you not?

1 A. We sell to the plumbers direct.

Q. Do you sell to anybody other than plumbers?

A. No, sir.

Q. You do not sell to jobbers or the public generally, but only to the plumbing trade?

A. We do not sell to the public, and we do not sell to the jobber at all. Of course, if the jobber in the next street wants a piece of our ware we would accommodate him, but it is not our rule to sell to the jobber, and we do not sell to the jobber in quantities; we do not supply the jobber.

Q. If you do sell to the jobber at all it is purely as a 2 matter of accommodation and would be an isolated case?

A. That is it.

Q. You do not know if you do do that?

A. No, but we would do it; that would be the natural sequence in business.

Q. You personally have not charge of the details of the sales of your business? A. No.

Q. But you have general supervision of the sales, as well as all other departments, have you not? A. That is correct.

Q. Now, what do you do with the product that you manufacture at Elizabethport, New Jersey? I mean, what do you 3 do with it after it is manufactured at the factory, what is the first thing you do with it?

A. We ship it to our jobbing houses.

Q. Where are they?

A. New York, Worcester, and Brooklyn.

Q. You have three different branches?

A. Yes. We really have four; we have the main office in New York City, the branch in the Bronx, one in Worcester, and one in Brooklyn.

Q. You have warehouses at those points just mentioned by you? A. We have.

4 Q. And you ship your manufactured enameled iron ware from Elizabethport to the warehouses at these different places? A. That is correct.

Q. Then what do you do with it?

A. Sell it to the plumbers in the vicinity of any of our branches.

Q. In the ordinary course of trade? A. That is correct.

Q. Do you buy enameled iron ware? A. Oh, yes.

Q. From whom? A. Why, I cannot tell you that.

Q. Different manufacturers? A. Yes.

Q. Name some of them?

A. The United States Sanitary, the Standard Sanitary, and Weiskittel, and some of the others.

Q. Different manufacturers? A. Yes.

Q. Your jobbing business is in the different localities that you have named; that is to say, Greater New York, your three branches being in this vicinity, that is the Bronx, Manhattan and Brooklyn? A. Yes.

Q. And your Worcester branch, what territory does that cover?

A. I would say two hundred miles around Worcester. The business of our jobbing houses is a localized business, you know, and it would be hard to say exactly where every piece of goods went, but they go right in the vicinity—as near home as we can possibly go to sell it.

Q. Doctor, is the statement in the bill of complaint that you sell—it refers to all of the defendants, but so far as it concerns your company—that you sell and ship your product generally throughout the United States, and to a less extent to foreign countries, is that correct in reference to the business of the Colwell Lead Company? A. That is incorrect.

Q. Now, doctor, have you ever been in Mount Clemens, Michigan? A. Never.

Q. At any time in your life? A. Never.

Q. You were not present, then, at any meetings held in Mt. Clemens, Michigan, or anywheres in the State of Michigan, of any enameled iron ware manufacturers for any purpose? A. No, sir.

Q. Nor at any time? A. No, sir.

Q. When did you first hear of any of the meetings referred to in the bill in equity, and in the indictment in the criminal proceedings?

Mr. GROSVENOR: I object to that question as too general. The bill in equity does not refer to any specific meetings, or any general meeting.

Mr. HONEYMAN: There is the allegation in a clause in the exhibits in the bill of complaint, in the criminal proceedings, where you set forth overt acts—you set forth specific meetings in Mt. Clemens.

Q. When did you first hear of any of the meetings referred to in the bill in equity, or in the indictment, meetings of manufacturers in Michigan?

1 Mr. GROSVENOR: I object to that question, because it is entirely too broad. The record shows that there have been a lot of meetings in Chicago, Pittsburgh and New York. Mt. Clemens was only a committee meeting, and it seems to me the question should be directed to a particular meeting.

Mr. HONEYMAN: I asked him when he first heard of any of the Mt. Clemens meetings.

Mr. GROSVENOR: If that question is confined to meetings in Michigan, I have no objection to it.

Mr. HONEYMAN: I will confine it to Michigan.

2 (Question repeated to the witness.)

A. Why, in the summer of 1911.

Q. In the summer of 1910, I guess you mean?

A. Yes, after this suit was instituted.

Q. Now, doctor, were you present at any meeting in Pittsburgh, or New York, during the months of February, or March or April, 1910, where there were any manufacturers of enameled iron ware present? A. No, I was not.

Q. Were you present at any meeting in Chicago at any time in the spring of 1910, any time between January and July, 1910, at any meeting of manufacturers of enameled
3 iron ware? A. I was not.

Q. When did you first hear of any of those meetings in Chicago, or Pittsburgh, or New York?

A. In 1910; in the summer of 1910, after this suit was started; I did not know anything about any meetings before that.

Q. Doctor, where were you in the spring of 1910, March and April?

A. In March and April I was in Arizona, New Mexico, California and Mexico.

Q. Were you at any time after the very early part of
4 March, and prior to the latter part of April, east of New Mexico?

A. I think I was for one day; I think I came east as far as St. Louis, and went back the same night. I stopped one day there, but it was on other business, and it had nothing to do with the plumbing supply business.

Q. While you were in the West, during the months stated, did you meet any manufacturers of sanitary enameled iron

ware, or did you have any conferences with any manufacturers of enameled iron ware? 1

A. I did not have any conferences with any manufacturers of iron enameled ware on business matters, no.

Q. When did you first hear of the Arrott patent?

A. During the progress of the suit brought by the Standard Company to establish their right to the Arrott patent; I do not remember what year it was; it was about 1908, wasn't it?

Q. Somewheres around 1908?

A. Yes. It is mentioned in those papers somewheres, but I do not remember exactly the date. It was the suit against the Mott Company. 2

Q. When did you first begin to use the Arrott patent in the Colwell Lead Company?

A. In the early summer of 1909.

Q. It was at that time that you installed the dredgers in your factory at Elizabethport? A. Yes.

Q. From whom did you get the right to install them in your factory?

A. From the Standard Sanitary Manufacturing Company.

Q. Did you have a license agreement with them? 3

A. I had an agreement with them, yes, a license agreement.

Q. On a royalty basis? A. Yes.

Q. And you have used the Arrott devices continuously ever since in your factory, have you not? A. We have.

Q. And are using them today?

A. Yes. When you say "continuously," you mean continuously excepting for breakdowns, etc?

Q. Yes, of course. A. Yes.

Q. I assume you may discontinue the use of the furnace for some reason or another, and you could not use the device, but whenever you use the furnace you use the device? 4

A. Yes, right straight along.

Q. Why did you put the Arrott devices into use in your factory?

A. Because we considered the Arrott dredger of great commercial value to us.

Q. Did you have any special reason for using it?

A. Oh, yes. We could make a better quality of ware; we could make it cheaper, and it is easier on the men.

1 Q. You considered it good business judgment for the Colwell Lead Company to use the Arrott devices?

A. Yes, we did, otherwise we would not have done so.

Q. That licensed arrangement that you made with the Standard Sanitary Company, were there any other persons a party to that arrangement other than the Colwell Lead Company and the Standard Sanitary Manufacturing Company?

A. None whatever; the Standard Sanitary Manufacturing Co. gave us the terms and we simply accepted them and went ahead.

2 Q. You have no arrangement, or agreement, or understanding, with any other manufacturer of enameled iron ware in connection with that, have you? A. No.

Q. Had Mr. Wayman anything to do with your procuring that license? A. Nothing whatever.

Q. When did you first meet Mr. Wayman with reference to your taking any license from him?

A. Why, after I returned from the West last spring, in the early part of May, I should say.

Q. And you returned on what day?

A. I think about the 28th of April—about the 28th or

3 the 29th of April.

Q. And it was some little time after your return that you met him? A. A little while after that, yes.

Q. Where did you see Mr. Wayman?

A. In New York City.

Q. Did he come to your office?

A. That is my recollection.

By Mr. GROSVENOR:

Q. Do you say that is the first time that you met Mr. Wayman?

4 A. No, I had met him before, but not in connection with this matter.

By Mr. HONEYMAN:

Q. You had not met him before in connection with this Arrott patent? A. No, sir.

Q. What did he say to you on this occasion?

A. Well, it would be a little bit difficult to remember exactly what he did say, but in a general way I could tell you.

Q. Just tell us substantially? 1

A. In substance his conversation was to the effect that he had the Arrott patent, and that he was issuing the license to manufacturers, and that he would issue a new license to us.

Q. Did he say anything about its being necessary for you to have a new license? A. Oh, yes.

Q. What did he say?

A. He owned the patent, and our agreement had been made with the Standard Sanitary Company, and that agreement ceased when he took the ownership of the patent.

Q. Did you have any talk with him about your business 2
in respect to this license agreement?

A. Well, yes, I wanted to make a license agreement with him for the use of the patent, so that we could continue using the dredger, and we finally consummated such arrangement.

Q. You finally consummated an arrangement? A. Yes.

Q. Was your arrangement similar to the license which he first proposed to give you?

A. Why, no. We had a rider in our license agreement that made considerable change in it.

Q. Did he say anything to you about the license agree- 3
ments being uniform with the different manufacturers?

A. Yes, the license agreements were supposed to be uniform among all manufacturers, but we were in rather a different position; we are not manufacturers in that sense of the term. We simply ship to our own warehouses and sell direct to the plumber, and are not considered manufacturers in that sense.

Q. Did you say anything to him about the jobbers' license agreements in that sense not applying to your business at all? A. It did not affect us; we do not sell jobbers.

Q. Did you say anything to him about it? 4

A. I do not remember whether I did or not. It did not make any difference anyway, as it is a matter that does not concern us.

Q. Did you ever execute a jobbers' license agreement?

A. No.

Q. Did you ever ask anybody to make one? A. No, sir.

Q. Did you ever maintain any uniform scale of prices after you made your arrangement with Mr. Wayman?

A. No, we did not. The rider in our agreement practi-

1 cally made our contract the same as our agreement was before with the Standard Company.

Mr. Grosvenor: I object to the statement of what the rider contained, the rider being now in evidence as part of the exhibits and it speaks for itself. I move that the answer be stricken out.

By Mr. Honeyman:

Q. Coming back to the meetings, doctor, was the Colwell Lead Co. represented at any of those meetings, either in Michigan, or Pittsburgh, or New York, or Chicago?

2 A. No, sir.

Q. Were they represented either directly or indirectly?

A. No.

Q. As I understand it, doctor, the form of license proposed to you by Mr. Wayman was specially altered in your case by some additional provisions in writing?

A. That is correct.

Q. So that, so far as you know, it is not similar to what Mr. Wayman told you was the uniform license?

A. That is correct.

Q. And I want you to repeat, for the sake of definiteness,

3 the provisions with respect to a re-sale and maintenance of price, that did not apply to your business? A. It did not.

Mr. Grosvenor: I object to that question as calling for a conclusion of the witness; on the ground that the rider speaks for itself; and therefore move that the answer be stricken out.

Mr. Honeyman: I want to call attention to the fact that on page 42, of volume 2, of the record in this case, "statements referring to exhibits," it is stated that exhibits (being the license agreements with Way-

4 man) numbers 13 to 28, are all identical with petitioner's exhibit No. 9. That statement is incorrect for the reason that the Colwell Lead Company's license, Exhibit No. 14, is different from the other exhibits in that it has a certain typewritten provision, or provisions, in the agreement and has a rider attached, being materially varied.

Mr. Grosvenor: Counsel for the Government states that this rider referred to by counsel for the Colwell Lead Company, being a letter signed, "E. L. Way-

man," dated May 24th, and addressed to the Colwell Lead Co., and marked "accepted May 25, Colwell Lead Company, J. T. Duryea, president," that part of this exhibit No. 14 will be printed by the Government and inserted in the record in the volume 2 of exhibits at page 42. 1

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Duryea, you say that you obtained a license from the Standard Mfg. Co. to use the Arrott patent, in the summer of 1909?

A. I said I made an agreement with them, yes.

Q. Was it a written agreement? 2

A. I think not; it was done through correspondence, however.

Q. Correspondence with which officer of the Standard Sanitary Manufacturing Company?

A. Well, I could not tell you that from memory, but it was done with the officers of the Standard Sanitary Manufacturing Company.

Q. Do you know the officers of the Standard Sanitary Manufacturing Company? A. I do.

Q. What were the terms of that contract? 3

Mr. HONEYMAN: I object to that as the letters speak for themselves; the witness has testified that the matter was a subject of correspondence.

Mr. GROSVENOR: This is a proper cross examination with respect to a matter which counsel for the defense brought out.

(Question repeated to the witness.)

A. One dollar a day per furnace.

Q. Per furnace? A. Yes.

Q. Was the contract of definite duration?

Q. No, it was not. 4

Q. The contract was subject to termination at any time?

A. The contract was subject to termination at any time.

Mr. GROSVENOR: I will ask counsel to produce these letters showing the contract, at the next hearing.

Q. Mr. Duryea, your warehouses are located, you say, in New York City, in Brooklyn, and in Worcester, Mass.?

A. Yes, and in the Bronx.

Q. You have those four? A. Yes.

1 Q. Where are your customers located, and remember that I am confining myself in my questions to the enameled ware business only, only to that part of your business?

A. Why, within a radius of probably two or three hundred miles of each branch.

Q. That is two or three hundred miles of Brooklyn?

A. Probably not as much as that here.

Q. Within how many miles?

A. Well, it would be pretty difficult to say; it may not be more than one hundred miles.

Q. You sell to plumbers in New Jersey, do you not?

2 A. Oh, yes.

Q. Very largely?

A. Not very largely, but to some extent.

Q. Does your trade from your Worcester warehouse extend throughout New England?

A. No, our trade I doubt if it goes beyond Massachusetts. The trade there is circumscribed; it is only a small branch.

Q. How is your branch in the Bronx, does it extend up to Connecticut?

A. No, we sell through New York in Connecticut.

Q. That is from your New York office?

3 A. Yes, from the ware rooms.

Q. From what office did you supply, or do you supply New Jersey? A. From the New York office.

Q. Now, when did you first meet Mr. Wayman?

A. The first time that I ever met him? A. Yes.

A. I could not remember; several years ago; maybe three years ago; four years ago I guess.

Q. The first time you ever spoke to him about the license agreement was on May 20th, after you returned from the West? A. I did not say May 20th; I said early in May.

Q. It was some time in May when you first had a con-

4 ference with him in regard to taking out a license agreement?

A. That is correct.

Q. It is a fact that prior to that time you had been in correspondence with him in regard to taking a license agreement?

A. While I was in the West I received several letters—in fact, one or two telegrams from my own office, and I answered them to the effect that I would do nothing about it until my return.

Q. When did you leave for the West?

A. I think it was the 5th of March. 1

Q. And prior to that time you had been in correspondence with him in reference to taking out a license agreement?

A. Not that I recall.

Q. You have no recollection of that? A. No, sir.

Q. You were not present you stated at the meeting in Pittsburgh of February 1st? A. No, sir.

Q. Do you recall any correspondence with Mr. Wayman shortly after that meeting with reference to all the manufacturers going into a license arrangement under the Arrott patent? A. I do not recall any such correspondence.

Q. You do recall that you received letters from him about 2
that time in relation to that matter, do you not? A. No, sir.

Q. You have no recollection of any kind on that subject?

A. No, sir, I have no recollection of hearing from Mr. Wayman in regard to a license arrangement until I was in the West.

Q. And you left for the West at what time?

A. Fifth of March.

Q. I will read you Petitioner's Exhibit No. 77, being a letter dated March 15th, 1910, addressed to Mr. E. L. Wayman, "Dear sir: Yours of 19th, enclosing memorandum of agreement just received. In the abstract it looks good to 3
me providing all manufacturers sign up. However, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you, though, of course, we will be greatly influenced by what the other manufacturers do.

"I expect to be in my office about the 1st of April and will be glad to hear further from you.

"Yours truly,

"J. T. Duryea."

Do you recall writing that letter? 4

A. It was written from the West.

Q. Written by you? A. Evidently.

Q. Does that letter refresh your recollection as to correspondence with Wayman in respect to taking out a license agreement?

A. No, as I say I received several letters and several telegrams while I was in the West, which I replied to along these lines.

Q. You then did know at that time while you were in

1 the West that there was under consideration by the manufacturers of enameled ware, that they should all enter into an arrangement under the Arrott patent?

A. Yes, and I have already said so; I received letters from Mr. Wayman while I was in the West.

Q. About that matter? A. Yes.

Q. This expressed your views of the matter at that time (indicating Petitioner's Exhibit No. 77)? A. At that time.

Q. You say there "in the abstract it looks good to me providing all manufacturers sign up." You mean there the manufacturers of the Sanitary Enameled iron ware, do you
2 not?

Mr. HONEYMAN: I object to that, as the letter speaks for itself.

Mr. GROSVENOR: I want to know who you meant by "all manufacturers?"

A. Why, the manufacturers of enameled ware, of course.

Q. "However, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you." You went over it in detail with him after you returned from the West in May, is that right?

3 Mr. HONEYMAN: I object to that as the conversation which he had with Mr. Wayman will speak for itself as to what that was.

Mr. GROSVENOR: Answer the question.

THE WITNESS: I had a conference with Mr. Wayman, yes, after my return.

Q. And as a result of that conference the rider was attached to the printed contract which modified, in that degree, your contract with Wayman. That is, I mean it made your contract with Wayman different from the other contracts of the other manufacturers? A. That is correct.

4 Q. Then reading that letter, "of course, we will be greatly influenced by what the other manufacturers do." That was the expression of your feeling at the time the letter was written, March 15th, 1910, is that right?

Mr. HONEYMAN: I object to that, as the letter speaks for itself.

THE WITNESS: Certainly.

Q. You meant by "other manufacturers" there what? Did you mean manufacturers of sanitary enameled iron ware?

A. Exactly.

Q. You continue: "I expect to be in my office about the 1st of April and will be glad to hear further from you." There has been introduced, Mr. Duryea, a memorandum of agreement—you will note this letter says, "memorandum of agreement," as Exhibit No. 3. The witness Wayman testified this was drawn up early in March, 1910. Is that a copy of the agreement which was sent to you in his letter of the 9th, and to which you referred in your letter of 15th?

A. I could not tell.

Q. Glance it over and tell me whether it is of about the same character?

A. I really could not tell; I was on a pleasure trip and stuffed that stuff in my valise and never looked at it; I do not believe I opened the contract even, but I wrote Wayman an answer to his letter, without looking at his papers. I would not bother with them at that time.

Q. Now, I will read you an earlier letter dated February 14, 1910, addressed to Mr. E. L. Wayman, marked Petitioner's Exhibit No. 76.

Mr. HONEYMAN: Is that an original?

Mr. GROSVENOR: It is the exhibit. The original was returned to counsel for the defendant and this was put in evidence without objection.

Mr. NOBLE: My recollection about that, if I may amend the Government counsel's suggestion, was that there was no original, but that Mr. Wayman stated he thought he remembered receiving a letter, and it went in in that way.

Mr. GROSVENOR: This is a copy of a letter received by me from counsel for the defendants last July, and this copy was made in my office, the original being returned to counsel for the defendants in September. When Mr. Wayman was put on the stand it was offered in evidence and accepted without objection.

Q. "Mr. E. L. Wayman, Dear sir: Replying to yours of 10th, your reading of our letter of 9th inst. is entirely correct. We will not require any preferentials below the lowest prices made by the Standard Sanitary Mfg. Co. Yours truly, Colwell Lead Co., J. T. Duryea." Then there are the initials J T D—BH. Do you recall writing that letter?

A. No, I do not.

Q. You do not? A. No, sir.

Q. Would your initials be on that letter if you had not written it? A. They are not apt to be.

Q. Then it is probable that you wrote it? A. It is.

Q. That indicates, then, that at that time you were in correspondence with Mr. Wayman about the preferentials that should be allowed to your company if a license arrangement was arrived at? A. I could not say.

Q. You say there, "We will not require any preferentials below the lowest prices made by the Standard Sanitary Mfg. Co.

A. That is true, but whether these preferentials were to be based on this license agreement I could not say; I do not remember that letter.

Q. What could they be based on then?

A. I do not know.

Q. You cannot suggest anything else other than the license arrangement? A. Scarcely.

Q. And probably it was that?

A. Quite probably. However, I have no recollection of it at all.

Q. But it is a fact then that your company was corresponding with Mr. Wayman from the early part of 1910 in reference to this license arrangement?

Mr. HONEYMAN: I object to that because it calls for a conclusion, and further that the letter speaks for itself, and on the further ground that it is improper to characterize the correspondence.

THE WITNESS: The letter speaks for itself. I have no recollection of it.

Q. After this contract was signed with Mr. Wayman, you used the re-sale price-lists in your business, did you not?

A. No, sir.

Q. You understand, do you not, that the re-sale price lists fixes the price of the manufacturer to the jobber, and also the price of the jobber to the plumber?

A. That is my understanding.

Q. You say you did not use the resale price lists in making your sales to the plumber? A. No, sir.

Q. Who is Mr. Geddes? A. He is our purchasing agent.

Q. You testified that you do not follow the details of the selling end of your business? A. That is correct.

Q. Would you know whether or not you did use the resale price lists? A. I think I would. 1

Q. Are you positive you would? A. I am.

Q. Do you know whether you ever had any resale price lists in your establishment? A. Surely we had.

Q. How many did you have?

A. I could not tell you; we had quite a few I presume.

Q. What did you have them for, if you didn't need them?

A. We get a hold of every price list we can, and a hold of every catalogue we can, no matter whose it is. We want to know what is going on and what prices are being used by others.

Q. I read your letter dated May 25, 1910, addressed to Mr. Wayman— 2

Mr. HONEYMAN: Is that the original letter?

Mr. GROSVENOR: It is a copy of the original which was returned to counsel for the defendants, and I will ask counsel for the defendants to produce the original at the next hearing—that is this afternoon—and if they cannot produce it—

Mr. HONEYMAN: How would I have an original written by the Colwell Lead Co. to somebody else. We do not have our originals. We have theirs. 3

Mr. GROSVENOR: Mr. Honeyman has been substituted as counsel for the defendants, Colwell Lead Company, and for his information I would say that the original, of which this was a copy, was obtained from Noble, Jackson & Hubbard, who, until today, have been counsel of record for the Colwell Lead Co. I will use this letter now and ask that the original be produced either by Mr. Noble, counsel for Mr. Wayman or by Mr. Honeyman this afternoon.

Mr. HONEYMAN: Mr. Honeyman desires to state he is counsel for the Colwell Lead Co., for Mr. Duryea and Mr. Tilden, that he is not counsel for Mr. Wayman and never was; that the desire of Mr. Honeyman's clients is to separate themselves from the other defendants. We have no control over the original papers of the other defendants. 4

Mr. GROSVENOR: Then I will modify my request and ask Mr. Honeyman to produce the letter-press copy books containing this letter, or the file copy on the

files of the Colwell Lead Co., in the office of the Colwell Lead Co. at Lafayette & walker Sts., the letter being dated May 25, 1910, and addressed to Mr. E. L. Wayman. I will make that request of him instead of asking him to produce the original.

Mr. HONEYMAN: Mr. Honeyman objects to counsel for the Government reading what purports to be a copy of the letter for the purpose of the cross examination of this witness, who knows nothing about the letter so far as the record now appears. There is no evidence on the record that the witness knows anything about any such letter.

Mr. GROSVENOR: I will ask you then to produce that letter this afternoon, and I will just ask the witness if he knows anything about a letter of that character being written by his company.

THE WITNESS: I know nothing about that letter, but it would be a letter in the natural course of business.

Mr. GROSVENOR: Will you mark this, Mr. Examiner, as Petitioner's Exhibit 281?

Mr. HONEYMAN: I object to any paper being marked "Exhibit" unless it is proven. It could be marked for identification as the paper that was handed the witness.

Mr. GROSVENOR: I expect to either have the original copy or the original. I know you gentlemen will produce one or the other for me, and I want it to go in the record.

Mr. NOBLE: I object, on behalf of my client, to any letter going in evidence marked as an exhibit which has not been proved. I have not seen the letter and have no knowledge of its character.

Mr. GROSVENOR: Just hand it over to him, Mr. Examiner.

Q. Who has charge of the files at your New York office?

A. Why, a young lady by the name of Miss Tribert.

Q. What are her initials? A. I really do not know.

Q. Does she have the custody of the correspondence of the company? A. Yes, she has charge of the files.

Q. I will read this letter now: "Mr. E. L. Wayman, Dear sir: Referring to yours of 19th, we will need about 36 copies

of the re-sale price lists for the use of our office and sales- 1
men. Yours very truly, Colwell Lead Co., Henry B. Geddes."
Are you still under license agreement with Mr. Wayman?

A. Yes, sir.

Q. It has not been cancelled? A. No, sir.

Q. I show you the rider which is attached to Petitioner's Exhibit 14, which is the license agreement between the Colwell Lead Co. and E. L. Wayman, said rider being a letter dated May 24th addressed to the Colwell Lead Co. by E. L. Wayman, and I ask you if that is the modification of the license agreement which you testified to on direct examination.

2

Mr. HONEYMAN: I object to that, as the paper speaks for itself.

Mr. GROSVENOR: I want to have it identified.

Mr. HONEYMAN: Do you want him to identify Mr. Wayman's signature, is that the proposition, or to identify the agreement?

Mr. GROSVENOR: I want to have him identify this part of the agreement and the rider which he referred to on his direct examination.

Mr. HONEYMAN: I object to the witness identifying 3
particular portions of an agreement. It seems to me that the counsel for the Government should either prove the whole agreement by this witness, or prove it by some other witness, but not identify particular portions of riders, or matters of that sort in this way.

Mr. GROSVENOR: Counsel for the Government calls the attention of the counsel for the defendant to the fact that the witness is holding in his hand Exhibit 14 with the letter which is attached thereto, and which has been called "rider." The question is addressed to the witness for the purpose of identifying the rider. 4

(Question repeated to the witness.)

THE WITNESS: That is the paper.

Q. That is your handwriting, "accepted May 25, Colwell Lead Co., J. T. Duryea, President."

Mr. HONEYMAN: I object to that, as the paper speaks for itself.

1 Mr. GROSVENOR: I want to identify this signature here.

Mr. HONEYMAN: I object to the counsel for the Government proving the agreement by the witness. It seems to me that the Government should not prove the agreement in this case by this witness.

Mr. GROSVENOR: The Government withdraws the question.

Q. You appeared voluntarily here, Mr. Duryea, did you not? A. No, sir, I was subpœnaed.

Q. You are the defendant here? A. Yes.

2 Q. You were subpœnaed by whom?

A. Well, that I do not know; I was notified to be here.

Q. Let me have a copy of your subpœna, have you it with you? A. I haven't it with me, no, sir.

Mr. HONEYMAN: I have the original, but have not the copy (handing paper to Mr. Grosvenor).

Mr. GROSVENOR: This will do.

Mr. HONEYMAN: I know it was served on him, although I did not serve it.

3 Mr. GROSVENOR: I offer that subpœna in evidence as Petitioner's Exhibit 282.

Q. Mr. Duryea, you testified that half of the enamel ware you manufactured, and half you buy as jobbers, is that correct? A. It is.

Q. And you mentioned the United States and the Standard Sanitary and Weiskittel, that is right, is it not?

A. That is right, and others.

Q. And you buy from their factories at Baltimore and Pittsburgh? A. Wherever they may be located?

Q. Now, do you buy as a jobber?

4 A. Yes, we buy as a jobber.

Q. The goods are shipped to your places?

A. To our warehouses.

Q. From their factories? A. Yes.

Q. How long has your company been manufacturing sanitary enameled ware? A. About nine years.

Q. Prior to the installation of the Arrott patent you used the hand method, the Arrott patent being installed in the summer of 1909? A. Yes.

Q. Did you have a dredge that was supported?

A. We had a dredge that was supported only by the operator; it was supported around his neck. 1

Q. How is your Arrott dredger supported?

A. My recollection is that there is no support except that the man holds it in his hand. I am not very clear on that.

Q. You are familiar with the manufacturing end?

A. Not so familiar with that as I am with the business end.

Q. Do you know what the length of the dredger is that you use? A. Now?

Q. Yes. A. Why, I should say about three feet.

Q. A three foot handle. Do you use the same size for small ware and tubs? 2

A. Just a moment, let me think on that for a moment; I think the handle is probably nearer five feet. We have a smaller one for the small ware.

Mr. GROSVENOR: Well, I think I have made it clear to the counsel for the Colwell Lead Co. that I want the correspondence which gives any evidence of the contract between the Colwell Lead Co. and the Standard Sanitary Mfg. Co., showing the contract entered into between these companies with respect to the license to use the Arrott patent in the summer of 1909. 3

Q. Do you know how much you paid the Standard Mfg. Co. during the year 1909 for the use of the Arrott patent?

A. I could not tell.

Q. Do you know how much you paid that company for the use of the Arrott patent during the year 1910?

A. No, I could not tell.

Q. Can you state it approximately?

A. It would be a guess.

Q. Who would know about that? 4

A. Why, our auditor would know.

Q. Who? A. Our auditor.

Q. What have you done with your correspondence with Mr. Wayman with respect to this license agreement?

A. Why, I turned my correspondence over to Mr. Noble, or to Noble, Jackson & Hubbard.

1 RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Doctor, referring to Petitioner's Exhibit No. 77, I ask you whether you ever saw that paper before (handing paper to witness)? A. I never saw this paper before.

Q. Have you any recollection of having written any such letter.

A. Well, I know I wrote some letter to Mr. Wayman last March from out West, but I could not tell. Lord Heavens! I have written a million letters since then. I do not know whether that was it or whether I ever wrote that, but I presume I did.

2 Q. But you do not know anything about it?

A. I do not, no.

Q. Have you ever seen Petitioner's Exhibit No. 76 before today (handing paper to the witness)?

A. Well, I have never seen this paper, no.

Q. Have you any recollection of ever having written that letter, or any letter similar to that?

A. No, I have no recollection of having written it.

Q. Doctor, in your purchases as a jobber, from the Standard Sanitary Mfg. Co. and Weiskittel, and the others, whose names you have mentioned, did you ever sign any

3 resale agreement with them? A. Never.

Q. In answer to counsel for the Government, you stated that the paper shown you was the rider referred to by you as part of the contract, or agreement, with Mr. Wayman, is that correct? A. That is correct.

Q. Now, doctor, you stated that your New York office sometimes shipped some goods to New Jersey, was that after they had been sold or before? A. After they had been sold.

Q. If a plumber comes in from Jersey City and buys a tub, you will ship it over to Jersey City for him? A. Yes.

Q. And the same is true of your Connecticut business

4 from your New York office? A. Oh, yes.

Q. Is that what you referred to in your statement that you made some sales in New Jersey and some in Connecticut? A. That is it.

Q. Did you ever talk with any of the other defendants named in this bill of equity, other than Mr. Wayman as you have already testified, respecting any uniform license agreements, or arrangement, for the Arrott patent, or for the making of any uniform license agreements at any time dur-

ing 1910 and prior to the institution of this suit? 1

A. No, Mr. Wayman is the only one I ever talked to about the matter until after this suit was started.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. You knew that Mr. Wayman was seeing the other manufacturers also about the matter, didn't you?

MR. HONEYMAN: I object to that question. I think the counsel should ask the witness questions as to conversations, and as to what took place, but a general question like that as to what the witness knew, or had reason to believe, is hardly evidence. 2

(Question repeated to the witness.)

A. I presume he was.

Q. Don't you know he was?

A. No, I did not know he was doing it, but I presume he was though.

Q. What do you mean by your statement in the letter of March 15th, "it looks good to me providing all manufacturers sign up?"

MR. HONEYMAN: I object to that.

THE WITNESS: I did not know whether he was seeing other manufacturers or whether he was not. 3

MR. HONEYMAN: Do not answer the question when I object. I want to object to the question, and move to strike the answer out on the ground that the witness stated that he did not know whether he had ever written any such letter.

MR. GROSVENOR: He said he presumed he did write it.

MR. HONEYMAN: He presumed he knew this and he presumed he knew that, but the question does not call for presumption; the question calls for knowledge of the witness. I object to the witness' presuming, and to the counsel presuming as two presumptions amount to an absurdity very often as a matter of evidence. 4

BY MR. GROSVENOR:

Q. What do you mean by this other statement: "we will be greatly influenced by what the other manufacturers do?"

Mr. HONEYMAN: I object to that, as the statement speaks for itself.

THE WITNESS: We naturally would be influenced by what others did in our line of business.

Q. Such as entering into a license arrangement?

A. In any way, in any form of business methods.

Examination of Witness Concluded.

Signature of the Witness Waived.

BERT O. TILDEN, a witness produced on behalf of the Colwell Lead Co., and on his own behalf, after having first been duly cautioned and sworn by the Examiner to tell the truth, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Tilden, you are the Secretary of the Colwell Lead Co.? A. I am.

Q. And have been for how long? A. For five years.

Q. You are one of the defendants in the bill in equity and in the criminal proceedings in Detroit? A. I presume I am.

Q. That is your understanding? A. It is.

Q. You were subpœnaed to appear this morning?

A. I was.

Q. Have you any active duties in connection with the business of the Colwell Lead Co.? A. No, sir.

Q. How long has it been since you had any active business there? A. About three years or more.

Q. You are president of the American Sanitary works?

A. I am.

Q. And all of your time and attention is devoted to the business of that company, is it not? A. It is.

Q. That company is not engaged in the manufacture of enameled iron ware? A. It is not.

Q. What do you do in connection with the affairs of the Colwell Lead Co.?

A. If I am in the city I attend an occasional meeting, annual meeting, and sign what necessary papers I am asked to sign as secretary.

Q. When did you first hear of the Arrott patent?

A. In a Montreal newspaper last August. I was on an automobile tour.

Q. That is August, 1910? A. It is.

Q. When did you first hear of any license agreement from Mr. Wayman relating to the Arrott patent, or relating to anything else?

A. Well, I never paid any attention to it; I was never interested.

Q. When did you first hear of any license on the part of the Colwell Lead Company from Mr. Wayman?

A. At that time that I saw it in the newspaper.

Q. And that was in August, 1910? A. It was.

Q. You never heard of it before that? A. No, sir.

Q. Did you ever attend any meeting of manufacturers of enameled iron ware? A. I did not.

Q. Were you present at any of the meetings in Michigan or Pittsburgh, Chicago or New York during 1910, where there were any enameled iron ware manufacturers?

A. I was not.

Q. What do you know about any of the matters or things alleged in the bill in equity or in the indictment proceedings, of your own knowledge? A. I do not know anything.

Q. Do you ever see any of the correspondence between the Colwell Lead Co. and other people?

A. Practically nothing.

Q. Have you anything to do with their sales or purchases? A. Nothing whatever.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Are you a director of the Colwell Lead Company?

A. I am.

Q. Do you attend the meetings generally?

A. Occasionally. I am out of the city a great deal of my time.

Q. Are you a salaried officer of the Colwell Lead Company? A. I am not.

Q. Do you have the custody of the minutes of the meetings of the directors of the Colwell Lead Company?

A. They are in the company's safe; I have not the combination of the safe.

Q. Do you, as secretary of the company, have custody of the minutes of the meetings of the Board of Directors of the Colwell Lead Co.? A. Have I custody of them?

Q. I will have the question read to you and request that you answer it yes or no.

(Question read to the witness.)

A. They are not in my possession.

Q. Just answer the question yes or no.

A. If you define the word "custody" for me, probably I will be able to say yes or no.

Q. Supposing someone would go to the Colwell Lead Co. with authority to see the minutes of the meeting of the Board of Directors, are you the proper officer to ask for them—in other words, are you charged under the by-laws of the Colwell Lead Co. with the custody and possession of the minutes of the meetings of the Board of Directors of which you are the Secretary? A. I presume I could find them.

Q. Now, will you answer that question yes or no?

A. Why, I would say yes, I could find them.

Q. You are the one to go to to get them from?

A. I do not recall what our particular by-law would be in that particular. I do see them, yes.

Q. Do you sign them? A. I do.

Q. Have you your subpœna with you?

A. I have (handing paper to counsel).

Mr. GROSVENOR: I will offer this in evidence.

Paper referred to was then marked Petitioner's Exhibit 283.

Q. Do you know whether there was a meeting of the directors of the Colwell Lead Co. to authorize the entering into of a contract with Mr. Wayman? A. I do not.

Q. Do you know anything at all about the enamel business? A. Practically nothing.

Q. Now, in this answer here you have sworn to a lot of things about the business. Did you ever see an article of enamel ware made? A. I have.

Q. By the old method?

A. What do you mean by the old method?

Q. When did you first see a tub made in your establishment? A. About six years ago.

Q. What sort of a dredge did they have, do you know?

A. Yes, they had a dredge that goes around the neck of the operator and he stands back there and works it.

Q. It was not supported from the ceiling?

A. It was not.

Q. Do you know whether the present dredger is supported from the ceiling or not?

A. I haven't been there for three years; I do not know whether it is or not. 1

Q. You haven't seen the actual operation of the new dredger? A. I have not.

Q. In your answer under paragraph 7, and in the ensuing paragraphs, is set out what purports to be the advantages of the Arrott dredger. You are just speaking from the intimation you gathered from others.

A. I have seen it in other factories.

Q. Where? A. Ahrens & Ott, in Louisville.

Q. When did you see it there?

A. About three years ago. 2

Q. Is that the only time you have ever seen it?

A. It is the only time that I recall now, yes.

Q. You do not pretend to know anything about the mechanical end of the enamel business, do you?

A. I do not, not of the enameled iron business.

RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Tilden, after you saw this dredger at the Louisville factory, did you make any report of what you saw to Dr. Duryea?

A. Yes, I told him it was a labor-saving device and that they were doing better work. It could be worked with one less man to a crew. 3

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. How many men do you have on a crew?

A. Why, as I recall, we have three.

Q. Now? A. I do not know.

Q. You do not know how many men you have now to a crew? A. I haven't an idea.

Q. But you used to have three?

A. I think so, as I recall them. I never had anything to do with the factory, and I only know the factory from casual observation, going there as a guest, so to speak. 4

Mr. NOBLE: I would like to ask the witness a question or two.

Mr. GROSVENOR: You are asking the questions as counsel for the other defendants?

Mr. NOBLE: Yes.

Mr. GROSVENOR: That is as counsel for those other

than the Colwell Lead Co. and Mr. Duryea and Mr. Tilden?

Mr. NOBLE: I would like to ask some questions on behalf of the other defendants than the Colwell Lead Co. and also other than Dr. Duryea and Mr. Tilden.

BY MR. NOBLE:

Q. Mr. Tilden, did you ever have any agreement with any of the other manufacturers of sanitary enameled iron ware, mentioned as defendants in the suit pending in the Circuit Court of the United States in Baltimore, and in the indictments against the same defendants at Detroit, relative to the maintenance of prices, or restrictions on sales, or any other matters connected with the license agreement?

A. I did not.

Examination of the Witness Concluded.

Signature of the Witness Waived by Agreement.

Mr. GROSVENOR: Counsel for the Government renews his request that the counsel for the Colwell Lead Co., Mr. Honeyman, will produce that letter of February 14th, and the other letter signed by Gettes, and will also produce the correspondence with the Standard Sanitary Mfg. Co. showing its contract with the Colwell Lead Co. for the license of the use of the Arrott patent.

Mr. HONEYMAN: Mr. Honeyman, counsel for the Colwell Lead Co., repeats that he has not the originals of Exhibit 76 and 77 for obvious reasons.

Mr. GROSVENOR: Of course, I mean the copies.

Mr. HONEYMAN: As for the other correspondence, I do not know where it is at the present time. It will have to be looked up. I certainly haven't it in my possession, and I know Mr. Noble hasn't it in his. What we can find is a matter of conjecture.

Mr. NOBLE: I would like to adjourn now until tomorrow morning, March 23rd, in Pittsburgh, Pa., where I wish to take testimony Thursday and Friday.

Mr. GROSVENOR: That is satisfactory to me.

THE EXAMINER: At what time?

Mr. NOBLE: We will say 11 o'clock, in Pittsburgh

tomorrow, March 23rd, 1911, at the Federal Building. 1

Thereupon, at 12:30 P. M. the hearing was then adjourned to meet again tomorrow morning, March 23rd, in Pittsburgh, at the Federal Building.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

UNITED STATES OF AMERICA 2

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa.,
11:00 o'clock A. M., March 23, 1911.

Met pursuant to adjournment at 11 o'clock A. M., Federal Building, Pittsburgh, Pa., at which time and place the following depositions were taken on behalf of the Standard Sanitary Manufacturing Company and other defendants: 3

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
representing the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq., and
HARTWELL P. HEATH, Esq.,
representing the Standard Sanitary Manufacturing Company, and others. 4

HOMER F. STALEY, a witness produced on behalf of the Standard Sanitary Mfg. Co., *et al.*, after having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. Please state your age, residence and occupation.
A. My age is thirty-two; residence, Columbus, Ohio; oc-

1 cupation, assistant professor of ceramic engineering at the Ohio State University.

Q. Will you please state where you were educated, and outline your experience since the date of your graduation, with particular reference to the manufacture of sanitary enameled ware?

A. I graduated from the Ohio State University, receiving the degree of B. A., and took in addition—

Mr. GROSVENOR: When did you take the B. A.?

A. In 1905. During the school year of 1904 and 1905 I
2 was also taking a large amount of ceramic engineering work, and took also another school year of ceramic engineering work—I beg your pardon, as I will have to correct a statement there. I graduated in 1904, and that first school year that I mentioned of 1904 and 1905 should be the school year of 1903 and 1904. Then I took another school year's work in 1904 and 1905, entirely devoted to ceramic engineering.

My work in the ceramic engineering department covered all the ceramics taught in the university at that time. On July 1, 1905, I went to work for the McCrum-Howell Company—that should be the Kellogg-McCrum-Howell Co., as it
3 was at that time, manufacturers of enameled iron ware at Blairsville, Pa. My position at that time was that of chemist. In the fall of 1905 the plant at Blairsville burned down and the factory was removed to Uniontown, Pa. The new factory started into operation in the fall of 1906; in the spring of 1907 I was made superintendent of the plant and continued in that capacity until July, 1909. During the summer of 1909 I took a post-graduate course, or post-graduate work in chemistry at the Columbia University, New York City, and took up my work as assistant professor of ceramic engineering at Ohio State University in September, 1909.

4 During the summer of 1910 I was employed as consulting expert in the manufacture of enameled iron ware by the Humphryes Manufacturing Co. at Mansfield, Ohio. Since September of 1910 I have been retained as consulting expert in the manufacture of enameled iron ware by the D. A. Ebinger Sanitary Mfg. Co. at Columbus, Ohio. My connection with this firm still continues. I have also done work of smaller quantity as consulting engineer for other enameling plants. I am a full member of the American Ceramic Society, and have contributed the following papers to their proceedings

bearing on the question of enameling: first, the manufacture of sanitary enameled iron ware in volume 8; second, the compounding of frits—that is what the melted glass is called in the enamel—volume 10; third, the contraction of glasses in glazes on cooling as a cause of crazing, volume 12; fourth, the calculation of ceramic mixtures, volume 13; fifth, the cause and control of modelling in sheet steel enamels, volume 13.

Q. You did not give the proceedings.

THE WITNESS: Well, they are all in the transactions of the American Ceramic Society. These papers have been extensively re-printed and commented upon, not only in this country, but in England and on the continent of Europe.

Q. When you first went into the employ of the Kellogg-McCrum-Howell Co. at Blairsville, did you become familiar with the method of enameling used there at that time?

A. I did.

Q. Subsequently, at Uniontown after you became superintendent, and in your work in connection with this company at Columbus, did you also familiarize yourself with factory operations and conditions in enameled iron ware?

A. Yes, sir, I am entirely familiar with the methods used.

Q. How active is your work at the present time in connection with the company at Columbus?

A. The company at Columbus built a plant and had a man engaged to make their enamel and take charge of the application of the same, but after operating for three months under his direction they found that he was totally incapable, and made a contract with me to spend such time at their plant as I could take from my work at the university and direct the alteration of their plant and equipment, and the making of the enamel. My contract with them simply states that I shall see that their method of manufacture is carried on in a successful manner, whether it takes a large amount of time or a small amount of time.

The general course of procedure is that I go out there for two to four hours a day two or three times a week and give directions and see how things are coming on.

Q. At the time that you first went to Blairsville, what method was employed of applying the enamel to the ware?

A. In the main the ware was made by the hand method. They were experimenting on one tub furnace with the use of a pneumatic dredger.

Q. Please state in a general way how this hand method of enameling was practised?

A. In the use of small dredges, such as we use for applying the rims to tubs and making small ware, the dredge consisting of a sieve with a wooden handle which was held in one hand by the operator and agitated by means of a cracker —a simple steel hook,—held in the other hand of the operator.

Mr. GROSVENOR: You are now talking in reference to the small rim dredge?

A. In reference to the dredge used for small ware and rims. In the case of the large dredge for tubs the equipment method of procedure was the same except that the dredge was larger and was counterpoised by the means of a rope and weight, the rope being slung over a pulley.

Q. In the period from the time that the Blairsville plant was destroyed until the new plant was started in Uniontown, what were your duties?

A. The McCrum-Howell Co. fitted up an experimental laboratory at the radiator plant of this firm at Uniontown, Pa., and in this laboratory I carried on experimental work relating to various questions in the manufacture of radiators, and also carried on an extensive series of experiments relating to the manufacture of enameled iron.

Q. When the plant started up at Uniontown, what method of enameling was employed?

A. At first the hand method was employed.

Q. Just the same as at Blairsville?

A. Yes. The reason for using the hand method was at the time we began operating there we had not yet installed the necessary piping and equipment for using the pneumatic dredger.

Q. How long did the hand method continue in use there?

A. About three months.

Mr. NOBLE: What year was that?

A. That was in the fall and winter of 1906.

Mr. CHRISTY: And then what was done?

A. As soon as the necessary piping and fittings were installed the change was made to the use of pneumatic dredgers similar to those described under the Arrott patent. 1

Q. You mean the Arrott patent which has been referred to in this case? A. I do.

Q. Do you know whether the company had the right to use this pneumatic dredger at this time, and state the facts generally connected with its use?

A. I do not know whether they had the right or not, but they decided to use them and we used them continuously up to the time that I left the employ of the company, and I have information that they are still using them, and have been continuously from the time they started. 2

Mr. GROSVENOR: I object to that on the ground of hearsay and move that it be stricken from the record.

BY Mr. CHRISTY:

Q. Did the company try to use any other form than the pneumatic dredger, and with what success, if you know?

A. In the spring of 1908 the officials of the company informed me that we could no longer use the pneumatic dredger—

Mr. GROSVENOR: I object to that as hearsay. 3

THE WITNESS: —and must find some other means, or method, of applying the material; consequently, we started a long series of experiments trying to devise some other means or method of applying the enamel in equally as good a manner as the pneumatic dredger.

Q. Did those experiments succeed?

A. No, sir, they did not; we made several devices; Mr. Hamlin, head of the manufacturing department of the McCrum-Howell Co. gave me several suggestions, made several trips to Uniontown in regard to this matter. We built three or four different devices, but were unable to find anything to give, approximately, the results obtained by the pneumatic dredger. 4

Q. And you continued to use the pneumatic dredger commercially?

A. We continued to use the pneumatic dredger commercially because we could find nothing better, or find anything that would give results approximately as good.

1 Q. In your experience—first, in your observation of operations with the old hand dredge, and second in your observation of operations with the pneumatic dredger, did you find the latter to be advantageous or otherwise?

A. I found it to be decidedly advantageous.

Q. State generally in what respects.

A. It gave better ware at less cost.

Q. First as to the matter of cost, will you state wherein its advantages lay?

A. In the first place it used less enamel; in the second place, in the case of tubs, it was possible to make a piece of
2 ware with two men instead of three after installing auxiliary aids to manufacture, which could not be used advantageously without the use of this mechanical agitator or some equivalent device; in the third place, a piece of ware could be made in less time. This meant a saving in fuel, a saving in labor, a saving in plant, and a saving—

Mr. GROSVENOR: What do you mean by a saving in plant?

A. That you didn't have to have such a large plant and did not have to have so much money invested. It also meant
3 a final saving in the cost of superintendence.

In the fourth place, the ware could be made with less exertion. This meant a saving in labor, therefore a saving in wages and a saving in cost of maintaining the output of the plant; in the fifth place, the wear could be made by less skilled labor. This meant a saving in wages and a saving in cost of maintaining the output of the plant. May I speak without it being taken down by the stenographer?

Mr. GROSVENOR: I object to your so doing.

Mr. CHRISTY: Whatever you say goes on the record.

THE WITNESS: Then I am ready for the next ques-
4 tion.

Q. Taking up these various points which you have enumerated, you say in the first place that in the use of the pneumatic dredger there was a saving in enamel. Please state how this saving came about, and, in a general way, if you recall, about what it amounted to?

A. By the use of the pneumatic dredger the enamel could be applied more uniformly, therefore a piece of ware could be

adequately covered with the use of less enamel; the saving in enamel on a tub was approximately five pounds. 1

Q. What did that amount to in the matter of percentage?

A. It would amount to 20 per cent. of the amount that was formerly used with the hand dredge. That is, we figure it takes 25 lbs. of enamel with the old method and 20 lbs. with the use of the pneumatic dredger. The corresponding saving in smaller ware was about in the same proportion, although a little bit harder to keep track of on account of the diversity of shapes in small ware.

Q. You next said you were able to use a smaller crew on the tubs than before, just how much smaller would that be? 2

A. At Blairsville, with the use of hand dredges, we employed three men on a crew making tubs; at Uniontown we employed two.

Q. You said that this saving was in a measure brought about by auxiliary aids which could not have been advantageously used without the pneumatic dredger. Just what were these other aids and how did the pneumatic dredger render their use advantageous?

A. The other aids were the use of mechanical appliances for opening the furnace doors, operating the table and the use of a powder dummy, or supply box for feeding the enamel into the large dredge used in making the tub. 3

Q. Explain why these appliances could not have been advantageously used with the old hand dredge?

A. The labor involved in making a tub by the old hand dredge was so strenuous, such a strain upon the operator, that he could not have worked any faster than he did work having these appliances, but since the labor of the use of the pneumatic dredger was less he was able to work at a faster rate by the use of these appliances.

Q. Your next saving you found in the matter of time. How material was that? 4

A. About 25 per cent. of the time necessary to make a piece of ware by the hand method, which would amount to about 33-1/3 per cent. of the time to make it by the method using the pneumatic dredger.

Q. Under this head you spoke of the saving in plant. Explain a little more fully what you mean by that and include also the saving in superintendence, which you also mentioned?

A. If it would take an enameling plant containing six furnaces to make one hundred tubs by hand process one day, the same number of tubs could be made in the same time with the use of the pneumatic dredger and these auxiliary appliances in four furnaces. This would mean a saving of 25 per cent.—no, it would mean a saving of 33-1/3 per cent. in the cost of the plant. In the cost of superintendence, if it took—

Mr. GROSVENOR: I object to those statements of "ifs." It seems to me that those statements should be based on the observation at Blairsville, because it has certainly no relevency in arguing from "ifs." I would suggest that you change the form of the answer.

THE WITNESS: I see. To change that I might say that there is a saving of 33-1/3 per cent. in the cost of plant, because with the hand method we found—I beg your pardon—with the pneumatic dredger we found we could make the same number of pieces of ware on two furnaces that we were making with the hand method on three furnaces. That is a direct statement of the observation containing no hypothesis.

In the matter of the cost of superintendence with the hand method, there would be twenty-seven men employed on three furnaces in one day when the weather was cool; when the weather was warm we often found it necessary to employ thirty-three men to work on three furnaces in one day; with the use of the pneumatic dredger, at all times of the year, we employed twelve men.

Mr. GROSVENOR: On three furnaces?

THE WITNESS: No, I meant to say eighteen men, I beg your pardon, on three furnaces; six men to a furnace for a day's work. The cost of superintending the larger amount of men was an appreciable item.

BY Mr. CHRISTY:

Q. You say you employed eighteen men on three furnaces, what did the other men, outside of the two, whom you have previously mentioned, on each furnace have to do?

A. It took three men on each furnace per day by the hand method to turn the table and open the door. The additional number of men employed during the warm weather

was due to the fact that owing to the exertion necessary to make ware by the old hand method, we employed four crews of tub body enamelers and rim enamelers, instead of three crews. The number of table turners remained the same. 1

Q. Well, just to make the record clear, take a single furnace per turn under the hand method, and state how many men were employed and what each did.

A. Under the hand method there were three men employed, one man being variously designated as "first man," or "inside man," or "body enameler," who applied the enamel to the inside surfaces of the tub; the second man, variously designated as "second man," or "rim dredger," who applied the enamel to the rim of the tub. The third man operated the table by means of a crank and levers and opened and shut the door of the furnace. 2

Q. Now, coming to the pneumatic dredger, how many men were employed on a single furnace on one turn, and what did each do?

A. In making tubs there were two men employed, one applied the enamel to the inside surfaces of the tub, the other man applied the enamel to the rim of the tub. The two men together put the tub into the furnace and removed it from the furnace, and the opening of the door and operation of the table were done by mechanical means, mechanical means being actuated by the feet of the two operators. 3

Q. Now, you have mentioned, among other savings, the saving in trouble and expense of maintaining output, what did you have in mind there?

A. By the old method the exertion of making a tub, not only the increased exertion while the man was actually laboring, but the man has to labor for a longer time. This means that it took a man of considerable physical endurance, and considerable grit to stand the work, especially in hot weather; owing to the fact that this class of men is rather small, we had to employ men who would not always work steadily, men who would lay off a considerable amount of the time and who could especially not be counted on during the summer, and for this reason we found it necessary to keep at our plant one or two men who were familiar with the art of enameling and employ them at various odd jobs about the plant, paying them more than the labor they were doing was worth. 4

In addition to that, in order to get our men out and keep

1 them at work it was necessary to have a superintendent of a good deal of push and ability, and it was necessary to give him a larger number of foremen than was needed by the hand method.

MR. GROSVENOR: You mean by the automatic method.

THE WITNESS: Yes, by the automatic method, thank you.

At Blairsville we had, in addition to the superintendent of the plant, a day foreman and a night foreman in our enameling room. At Uniontown, when I
2 was acting as superintendent I was able to turn out a larger production without a foreman either by day or by night. The actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month.

Q. And do I understand that this last saving that you have mentioned was directly due to the substitution of the pneumatic dredger for the hand dredge?

A. It was, counting the fact that these auxiliary aids could be used with the pneumatic dredge and could not be
3 used with the hand dredge.

Q. With the pneumatic dredge, were the tubs of the same weight as those made by the hand dredge, that is comparing tubs of the same general quality?

A. The tubs made at Uniontown were considerably lighter after we got our foundry to the point where we could make a tub of the weight we wished to make it. When we first started to operate there, owing to difficulties in our foundry practice, we were not able to make tubs as light as we wished to, but when we got to the point when we could make a tub the weight we wished to make it we were able to make a
4 lighter tub with the pneumatic process than we were able to make with the hand process.

Q. Why was that?

A. It wasn't necessary for the tub to remain hot so long, since the enamel was applied more rapidly and in a thinner coat.

Q. In your experience, what was the disposition of the men as regarded the pneumatic dredger,—did they take to it or did they object to it?

A. There was some prediction among the men while we

were installing the pneumatic dredger, that the method of 1
installation we were employing, and the kind of equipment we were employing for its use, would not be satisfactory simply because it was different from what the men had seen at other plants, but several of our men had worked at other plants where the pneumatic dredger was used and they had asked us to put it in. After the first week or ten days the men were very much pleased with the pneumatic dredger and with the way in which we had fitted up our enameling room, and would have objected very strenuously to its discontinuance.

Q. Were there any occasions when a pneumatic dredger 2
ever broke down for any reason, and if so, what was done?

A. If a pneumatic dredger broke down the man would quit work and remain idle, his pay stopping until the dredger was in proper shape again.

Q. On such occasions had you hand dredges available?

A. We had. The only time that a man would use a hand dredge was when he had a tub practically completed and simply needed a slight application of enamel with the hand dredge to complete the making of the tub. The same held true of our small ware; our small ware men would not work with the hand dredge. I have seen times when a man, or 3
crew of men, had spent probably fifteen minutes working on a tub and had already applied one coat of enamel and something would happen to their pneumatic dredger, they would go and sit down rather than complete making the tub with the hand dredge.

Q. And lose pay for the tub?

A. Yes, and not only that, they would get a calling down for having us lose the tub, or having the company lose the tub.

Mr. GROSVENOR: What do you mean by saying that they would get a calling down, from the foreman? 4

A. From the superintendent. I, as superintendent, would give the men a scolding for not completing the tub with the hand dredge. They had instructions that if the pneumatic dredger did not work they were to complete the piece with the hand dredge, and if they didn't do that they would be considered at fault.

Mr. CHRISTY: And you could not make them do it?

A. No, sir.

1 Q. Now, coming to the quality of the wear. You say not only the cost was less with the pneumatic dredger, but the quality was better, in what respect was it better?

Mr. GROSVENOR: Did he say the quality was better?

THE WITNESS: I said better quality, if I remember rightly.

Mr. GROSVENOR: At less cost?

Mr. CHRISTY: Yes.

THE WITNESS: The quality is better, first, as to defects which are apparent to the naked eye. These consist of rolls, beads, blue spots, blisters and pin
2 holes and fine crazes. The rolls, of course, were due to the fact that after the enamel is put on, and if the enamel is applied in an uneven manner, as it is by the hand method of application, it is liable to fall down and cause heavy spots of enamel which will make a roll; and in addition to that the enamel must be heated until there is appreciable flow in order to obtain approximate smoothness in the coat when it is applied by the hand method. In trying to cause this flow the workman is liable to cause a roll to be formed, the flow being too great in some spot, especially on the
3 vertical surfaces.

Beads are due to the fact that in heating a piece of ware so as to obtain a flow the enamel runs off the edges of the ware, which must then be trimmed or cut by the use of a knife. In addition to this, the enamel is very liable to be pushed up into sorts of beads around the edge of the piece. The fact that the enamel is applied in a thin uniform coat by the pneumatic dredger makes it unnecessary to have any large amount of flow, so there is a great deal less trimming necessary, and, consequently fewer beads. The larger
4 prevalence of pin holes and blisters in ware made by the hand process is due to the fact that the enamel cannot be applied in an even manner and a blister, or pin hole, is liable to form wherever there is a thick spot of enamel. The fact that the enamel cannot be applied so rapidly also makes it more likely that pin holes or blisters shall form, because it makes it harder to get the enamel on to the iron when the iron is in a proper state of heat for enameling.

The crazing is more liable to occur in enamel which had been applied by the hand method, due to the fact that the coat is of non-uniform thickness, which sets up strains in cooling and also to the fact that since the enamel cannot be applied as rapidly as in the other process the iron may not be in a proper state of heat for receiving the enamel when it is applied. 1

Mr. GROSVENOR: You did not define what a craze is.

A. A craze is a fine crack.

Q. Or wrinkle?

A. No, a roll is a wrinkle. 2

Q. You haven't told us about the blue spots?

A. The blue spots, of course, are due to the fact that with the hand method of application it is not possible to apply the enamel in as uniform a manner as with the other process, and so some spots are liable not to be sufficiently covered. Iron showing through enamel makes a blue spot.

Now, in addition to these defects which are apparent to the naked eye, there are other defects in a tub which are not apparent to the naked eye, and these other defects are especially liable to be in tubs which are made by the hand process. A tub made by the hand process has to be heated "harder" in order to produce a smooth tub. 3

Mr. GROSVENOR: Harder or hotter?

A. As the enameler says: "I heat my tub *harder*." Now, to heat a tub harder you may either heat it to a high temperature for the same length of time, or heat it at a lower temperature for a longer length of time. In either case you are heating your tub "harder," as the enameler says. Put quotations around the word *"harder."* It is a technical term used in the enameling business. This "harder" heating may destroy the bond between the enamel and the iron which renders it less resistant against shocks and jars, or it might make the enamel more brittle. That is, a piece of enamel ware which has been heated "hard" is more liable to crack and peel off on provocation of a blow or jar than one which has not been heated so hard; and another point is that by the pneumatic dredger the enamel being applied in a thinner coat, it is for this very reason more resistant to shocks and jars and more liable to give a 4

1 pieces of ware free of crazes. There are strains set up while a piece of enamel ware is cooling down. These strains are due to the fact that the enamel and the iron both contract as the tub cools down and they contract at different rates, which causes the strain that I speak of. If the enamel is thick the strains between the—or rather the strains caused by the different rates of contraction may be strong enough to hold the enamel free from the iron, causing a craze. An exaggerated case would be in the case of a severe blow given to a piece of ware. An enamel is a glass, and in very thin sections glass is elastic; the thicker it becomes the less elas-
2 tic it is. Fine threads of glass can be woven into cloth, while plate glass is not appreciably elastic. It is for this reason that practically all enamelers claim that a thin coat is liable to craze or to peel off than a thicker coat of enamel.

In addition to the fact, or probably consequent upon the fact that you have less liability of the presence of these various defects when manufacturing by the use of the pneumatic dredger, the percentage amount of seconds is smaller compared with the percentage amount of first-grade ware, and the percentage amount of unsalable ware is materially decreased, and owing to the fact that these various defects
3 are, however, liable to result in a rejection of the ware by the customer, or in the ware becoming unusable after it had been put into use, the amount of returned ware is a great deal less and the number of unsatisfied customers is a great deal less.

The returned ware item is more serious than a person not familiar with the business might think, because the manufacturer has to pay the freight both ways, and when the ware is returned it is seldom properly packed, and in four cases out of five has to be scrapped after it is received at the factory. That is, if you send a man a piece of ware which
4 has a slight defect in it and he happens to reject it, when it comes back to you you do not have a piece of ware with a slight defect, but you are almost sure to have a piece of scrap ware. That is all I have to say as regards to the quality of the ware unless you have some further questions.

Q. Your answer suggests one question: where you speak of the evil effects of harder heating under the old hand method, what you mean is heating of the ware after at least one coat of enamel has been applied to it, is that correct?

A. That is correct.

Q. In your experience, did you find that the quality of the enamel itself was rendered capable of improvement by the adoption of the pneumatic dredger, and if so, in what respect? 1

A. I did. Owing to the fact that the pneumatic dredger allows the enamel to be applied in a smooth coat, and it is not necessary to have any appreciable flow in the enamel on heating, it is possible, keeping the rest of the composition the same, to raise the amount of silica and alumina in the composition. C2 and A1 203 is the way it is used. These elements being the ones which make the enamel less liable to flow, inasmuch as the silica and the alumina are higher, or were higher, the enamel was more resistant to the attack of chemical agencies, either atmospherically or artifically applied, and the glaze was harder and less sensitive to wear. 2

Q. Does this result in a better article commercially?

A. It does, being less sensitive to wear and less sensitive to the attack of chemical agencies.

Q. What have you to say in the light of your experience as to the possibility of making what are considered commercially enameled iron articles of the present day by the old hand process of enameling?

A. It is possible to make a salable piece of ware by the hand process, but it cannot be done without more care, trouble, and without the employment of more skilled men than are used by the pneumatic dredger; that is, I think it possible, but I do not think it probable that it could be employed successfully, other things being equal in the process of the manufacturing, costs, etc.

Q. Could the hand process, in your opinion, based on your own experience and knowledge of the business, be employed to produce commercial articles at the present day to a sufficient average amount to be economical?

A. No, sir. I would wish to qualify that statement and say that my remark referred to enameled iron sanitary ware. If you were making very small pieces as specialties, or, for instance, for use in parts of electrical apparatus, it might be possible to use the hand dredge, but if you are not making such pieces and are making large pieces, it would not be possible; by large pieces I mean a piece as large as the ordinary size lavatory, or larger. 4

Q. You have pointed out various respects in which the use of the pneumatic dredger is highly advantageous as com-

1 pared with the use of the hand dredge. Do you consider the pneumatic dredger, in default of anything equally effective, to be essential for the production of modern enamel ware on a commercial scale?

A. I do. I would not attempt to build a plant unless I could use this dredger, or something equally as good, and I know of nothing that can be obtained at the present time that would give approximately the results that can be obtained by the use of this dredger.

In this connection I might say that while I was at the Humphryes Mfg. Co. in the summer of 1910, they were using
2 an apparatus which they had built at considerable expense to take the place of this pneumatic dredger; it was an electrical device. At one time we, or rather the company, had a large amount of ware to get out in a stated time, and Mr. Carpenter, Mr. D. A. Carpenter, General Manager, asked me what could be done to facilitate the speed in getting out this ware. I told him—

Mr. GROSVENOR: I object to this as pure hearsay and incompetent.

THE WITNESS: I beg your pardon.

Mr. CHRISTY: Mr. Staley, do not argue with Mr.
3 Grosvenor.

THE WITNESS: I told Mr. Carpenter that the best thing we could do would be to discontinue the use of the electrical dredger which was being used at night, and to use the pneumatic dredger. We did so, and there was a marked increase in the production simply due to that change.

Mr. GROSVENOR: When was that?

A. In the summer of 1910, while I was at the Humphryes Manufacturing Co. at Mansfield, Ohio. I was the man that
4 made the change and the man that saw the results.

At this point, 1 o'clock P. M., the hearing was adjourned for recess until 2:30 P. M.

After Recess.

HOMER F. STALEY (resumed):

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. You have said that you wished to make one correction in your testimony in connection with some illustrative statement which you made as to the quantity of tubs made in six furnaces in a day?

A. Yes, sir. I said in my former testimony that we could make one hundred tubs in six furnaces in a day by the hand method, and that we could make the same number of tubs in four furnaces by the use of the automatic dredger and auxiliary aids to manufacture. That should have been two hundred tubs in six furnaces by the hand method per day and we could make the same number of tubs in four furnaces per day by the use of the automatic dredger.

Q. That means a day of twenty-four hours, does it not?

A. It does.

Q. And how many turns? A. Three turns.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you define ceramic engineering?

A. Ceramic engineering is that branch of engineering which deals with silicate products. It embraces the manufacture of clay wares and their decoration, the manufacture of cement, the manufacture of glass and all the auxiliary kinds of manufacturing which deal with glasses and clay products.

Q. Now, by the study of the manufacture of glass, you mean the study of the components, or ingredients, which enter into the making or the manufacturing of the glass, is that correct?

A. Yes, for instance, in a course of glass making we deal with the winning and manufacture of the ingredients, the proportions to which those ingredients should be blended in order to make glass of various qualities, and also the mechanical processes of melting and working of the glass. The same would apply to clay products.

Q. Was the factory at Blairsville to which you went in 1905 the first factory of sanitary enameled iron ware which you had inspected?

A. Yes, that was the first—no, it was not. I had visited

1 a small factory which made some kinds of sanitary enameled ware at Columbus, Ohio.

Q. What is the name of that factory?

A. The Ohio Penitentiary.

Q. Did they make bath tubs?

A. They did not make bath tubs; they made sinks; I believe sinks was the only thing they made in a sanitary line.

Q. When you went to Blairsville, that company was just starting in the manufacture of sanitary enameled iron ware, was it not?

A. No, it was not. The plant had been there for some
2 six or eight years. The Kellogg-McCrum-Howell Co. had had control of the plant for something like two years. I am not absolutely sure as to the exact length of time, but it was something like a couple of years.

Q. In what capacity did you start with them?

A. I went there with the title of chemist. The formula that they were using was turned over to me and I took charge, first of the making of the enamel, directing how ingredients should be used and how it should be melted and how it should be ground, etc. While at first I did not have direct charge of the men in the enameling room, yet the foreman
3 was instructed to follow my directions or any suggestions I should give him as to the way in which the enamel should be applied.

Q. Then the experience and knowledge which you had gained in the study of ceramics was used when you first went there in the making of the enameling powder, is that right?

A. Yes.

Q. You were the scientific man of the establishment?

A. I was called that.

Q. And you were turned to the making of the powder?

A. Yes.

4 Q. Were you directed to make the slush? A. Yes.

Q. Did you have any duties in connection with the selection of the pig iron?

A. The pig iron at the Blairsville plant had already been bought when I was there. I was consulted as to how it should be blended and put into the cupola.

Q. What was it blended with?

A. The various brands of pig iron were blended in various proportions in order to produce an iron of given quality.

Q. And that you had charge of?

A. I was simply consulted in that respect. The foundry foreman had direct charge as to the weighing and so on, but I advised with him, and I advised him as to what proportion to use the various iron. 1

Q. You mean you gave him instructions as to the ingredients going into the iron?

A. Yes. What I have been telling you now applied only to the practice at Blairsville, and the plant only operated there for a few months; at Uniontown the conditions were different and my duties were different.

Q. When you went to Blairsville, did you make changes in the proportion in the various kinds of pig iron? A. Yes. 2

Q. You were not satisfied with the mixture of the different kinds of pig iron, were you?

A. No, sir, I was not satisfied with it; I changed the pig iron.

Q. Now, take the slush. Were you satisfied with the slush coat they were making when you went there?

A. No, sir, I was not.

Q. And you changed that? A. I changed that.

Q. And were you satisfied with the enameling powder which they used? A. No, sir.

Q. I beg your pardon. A. No, sir, I was not. 3

Q. And you changed that? A. I changed that.

Q. And in making the changes in these three things, the quality of the pig iron, the ingredients of the slush and the enameling powder, you used this knowledge, and brought to bear this knowledge and experience which you had gained in the study of ceramics at Columbia and the Ohio State University?

A. Yes. I had not been to Columbia University at that time.

Q. But you used the knowledge which you had gained from previous study? A. Yes. 4

Q. Did you consider these changes material?

A. Yes, sir, the changes were material.

Q. They brought better results?

A. They brought better results. The main thing gained in the change in the composition of the enamel was a reduction of cost per pound for the melted enamel. I am not ready to say that the enamel was a better enamel or worked any better, but it cost less per pound, and that was my object in changing it.

1 Q. As I understand it, in the manufacture of this sanitary enameled iron ware, it is necessary to have a slush coat and an enamel powder and iron, that is cast iron, which are harmonious. I mean by that that the relative components of each of these articles must be studied, and the proper formulas observed, is that right?

A. As to the composition of the iron itself, I would say that the composition of the iron could vary within very wide limits.

A. Of the what? A. The iron itself.

Q. Of the cast iron or the pig iron?

2 A. Of the pig iron. The composition of your cast iron could vary within very wide limits and still be suitable for making good enameled iron ware. I believe that there has been a great deal of trouble blamed on the composition of the iron simply because the man who is making the enamel and who sees to the application of the enamel was not able to do his part of the work properly, and whenever he would get in a hole, or get to the point where he could not correct the trouble in any way, he would simply blame it on the cast iron.

The reason I changed the composition of the iron was 3 not so much for the sake of getting a better iron for enameling but for the sake of reducing the cost of our cast iron, and for the sake of getting better castings in the foundry.

Q. What do you mean by "getting better castings in the foundry?

A. I mean castings with fewer blow holes, fewer slag spots and fewer cold shots or misrun castings. In fact I did not pay any particular attention as to whether a certain mixture, or their mixing, would enamel up well or not. I would consider whether it would cast well.

Q. That is the pig iron? A. Yes.

4 Q. How about the enamel powder?

A. It has to be kept under control, rather accurate control, or you could not make good enamel work with it by any process.

Q. Then it is important to have a proper sort of enameling powder, is it not? A. It is.

Q. What are some of the ingredients that go in the enameling powder? A. It is a long list, something like twenty.

Q. Give us as many as you can recall.

A. Feldspar; flint; sand; borax; borax acid; soda ash; 1
sodium nitrate; pearl ash; potassium nitrate; oxide of lead, which may be used in several forms; there are several oxides of lead, any one of which may be used; oxide of zinc; barium carbonate; calcium carbonate; calcium fluride; barium fluride; cryolite; sodium fluride; oxide of tin; bone ash; oxide of antimony; sodium antimony; oxide of arsenic; sodium arsenate. I believe that is all I can think of just at present.

Q. Now, of the components of the slush coat, can you mention some of the ingredients of that?

A. All of the ingredients that I have mentioned there may be used in the slush coat with the exception of bone ash 2
and oxide of tin. I never heard of a slush coat containing either one of those ingredients; any of the others may be used.

In addition to that, a slush coat may contain clay, oxide of cobalt, oxide of copper; oxide of nickel and oxide of various other metals; oxide of manganese is sometimes used. A slight amount of oxide of manganese may be used in the cover coat, which is the enamel itself.

Q. Do you consider the making of the slush an important step in the making of the enamel ware? A. Yes, sir.

Q. That is one of the most important, isn't it? 3

A. The making of the slush coat is important; the application and burning of the slush coat is really more important.

Q. Do you apply your slush coat in a liquid form?

A. Yes.

Q. By brush?

A. I have applied it both by brush and by pouring it.

Q. In order that the enamel powder may fuse properly it is essential that there be a proper form of slush coat, is it not? A. Yes.

Q. And that the slush be fired and applied properly? 4

A. Yes.

Q. Why is that so important?

A. If the slush coat is not of the right composition it will not have a long heat range, that is the range of temperature between the point at which it melts into a glass fluid enough to adhere to the iron, and at which there is sufficient volatilization due to heat from the slush coat in order to cause it to burn to a crisp, and as is said in enameling practice, "not

1 long enough," so we must have a slush coat of long heat range.

Of course, if it is not applied properly, if it is applied thick in some places and allowed to run down and cover thickly in some spots and run off the casting in other spots and become exceedingly thin, why, it is liable to burn up on the thin spots and not be sufficiently cooked down on the heavy spots to form sufficient bond with the iron. If the slush coat is not adapted in its heat range to the heat range of the enamel the slush coat may burn up under the enamel after the enamel is applied.

2 Q. What do you mean by "heat range?"

A. I tried to define that a while ago. I mean by heat range the range of temperature between the point at which the slush coat becomes fluid enough to adhere to the iron, and the point in temperature at which there is enough volatilization from the slush coat, due to heat, to cause it to burn to a crisp, or to start to burn to a crisp, especially on thin spots.

Q. Now, you say that it is necessary that the heat range of the slush and the heat range of the enamel powder correspond, that is be the same?

3 A. No, not the same. The slush coat must melt to lower limits of the heat range, and the slush coat must be also within the lower limit of the heat range of the enamel powder. That is, the slush should start to melt before the tub is fully red, because as the tub becomes red, oxidation sets in very rapidly in the iron and the slush coat must melt and cover up the iron to prevent the iron from oxidizing while the tub is being heated up to the proper temperature for making the tub. But the slush coat must also have an upper limit of heat range, which is higher than the upper limit of temperature at which the covering enamel will be heated, so 4 that the slush coat won't burn up under the enamel while you are trying to cook your enamel down.

Q. Is the formula for the making of your slush coat one of the secrets of the business? A. It is.

Q. How about the formula for making the enamel powder?

A. Those are secrets, too. There is no literature that I know of, that is no reliable formulas for making either a ground coat or slush coat.

Q. A ground or slush coat, what is the difference?

A. I mean in making the ground or slush coat, which means the same thing, or cover coats. 1

Q. That is the enameling powder? A. Yes.

Q. There have been no text books written on those subjects?

A. No, sir, there have been no text books written on those subjects. My own publications, of which I gave you a list, probably contain more relating to the manufacture of enameled cast iron as practised in this country than any other, and unfortunately the one paper which contains some compositions for cover coats and ground coats is now in the hands of the printer—that is volume 13 in the transactions of the American Ceramic Society—and therefore not available. 2

Q. The fact is, then, that this study which you have given the enameled ware has been in the main, if not entirely, devoted to the consideration of what elements should go into the making of the slush coat, and into the making of the cover coat, which is the enameling powder, is that correct?

A. No, sir.

Q. What requires special attention?

A. The application of the ground coat, heating the ground coat, the application and heating of the enamel itself. 3

While at Blairsville I did not have direct charge of the men in the enameling room; at Uniontown I was put in charge of the enameling room as soon as they started operations and had direct charge of the men and the applications.

Q. Well, I am coming to Uniontown later. Other than these factories that you have mentioned, Blairsville which burned down, Uniontown factory of the McCrum-Howell Co. and this factory at Columbus, have you visited any of the large factories throughout the country?

A. Yes, I have. As I said this morning, I was employed in the Humphryes Mfg. Co. 4

Q. In the summer of 1910? A. Yes.

Q. That is a small factory, isn't it?

A. It has a five furnace plant.

Q. Have you ever been over the J. M. Kohler Sons Company's factory at Sheboygan, Wis.? A. I never have.

Q. Or the Iron City Sanitary Mfg. Co., Zelienople, Pa.

A. I never have; I have visited several other plants; I have visited Mott's plant at Trenton, New Jersey.

1 Q. When did you go over that?

A. I went there while I was attending a meeting of the American Ceramic Society at Trenton, N. J., during the month of February.

Q. This year?

A. This year, and I also visited the Colwell Lead Company's plant at Elizabeth, N. J.

Q. This year? A. This year?

Q. Have you been over any other factories?

A. I have visited the Allegheny factory of the Standard Sanitary Mfg. Co.

2 Q. When did you go over that? A. In February.

Q. This year?

A. This year, and also the plant of the United States Sanitary Mfg. Co. at Monaca, Pa.

Q. This year? A. This year.

Q. And these visits to these different factories were all made during the month of February?

A. Yes; I have also visited during the month of February of this year, the plant of the Blairsville Enameled Iron Sanitary Mfg. Co., at Blairsville, Pa.

Q. Was that this year?

3 A. During the month of February, this year.

Q. At the time that you visited these several plants, did you expect to be a witness in this suit? A. I did.

Q. Who suggested that you be a witness?

A. I do not know which one it was; it was one of the attorneys for the defense. They suggested that I visit some of these plants, and did not know that I expected to visit others. I visited the plant of the Blairsville Enameled Iron Mfg. Co., I believe it is called, at the invitation of Mr. Cook, president of the company.

Q. When was that? A. In February.

4 Q. This year? A. Yes.

Q. How did you happen to be a witness in this suit? Did you go to the attorneys for the defense and offer your assistance, or did they hear of you and send for you?

A. They heard of me and sent for me.

Q. That was when?

A. I do not remember exactly; it was during this past winter some time.

Q. Since December? A. I am not sure.

Q. Then you went to these other factories after that, is that correct? A. It is. 1

Q. Now, other than the use of the hand dredge, in respect to which you testified this morning, at Blairsville and at Uniontown, have you seen the hand dredge in operation at any of the other factories? A. I have.

Q. Where?

A. I have seen the hand dredge in use for making quite small pieces of ware which were of intricate shape, at Mansfield, Ohio, at the plant of the Humphryes Mfg. Co., and at the plant of D. A. Ebinger at Columbus, Ohio—the D. A. Ebinger Sanitary Mfg. Co., at Columbus, Ohio—but in 2 neither of these plants is the hand dredge used, or was it used, for making large pieces of ware, except for some reason or other when the pneumatic dredger was not available.

Q. Your experience then in the use of the hand dredge is confined to the instances you have mentioned?

A. Let's see, there is Blairsville, Uniontown, Mansfield and Columbus. I believe it is.

Q. Did you see the hand dredge in operation on any ware at the Blairsville Iron Enameling Company, or rather the Blairsville Enameled Iron Company?

A. No, sir, they are not using the hand dredge. 3

Q. What are they using? A. The pneumatic dredger.

A. The Arrott dredger? A. A modification of it.

Q. What are they using at the Mott works?

A. A modification of the Arrott patent. It is a system worked up by Mr. Ditheridge, I believe.

Q. At the Allegheny works what were they using?

A. They were using the Arrott dredger, and also at Monaca.

Q. Have you had any experience in the selling end of the business?

A. If you mean by selling, going out and selling the 4 wares, no. At Uniontown I had charge of the shipping, that is through a foreman; I saw all of the orders and saw that the orders were got out, had charge of the inspection of the ware and of the inspection of the returned goods.

Q. But you have never been a salesman? A. No, sir.

Q. And you have never been a jobber? A. No, sir.

Q. And you are not familiar with the goods of other manufacturers?

A. Not other than I have seen them in various show

1 rooms, etc., and as the firm with which I have been connected would buy pieces of other firms' manufacture, I have seen quite a number of pieces; I have seen quite a number of pieces also which were returned to the plants with which I have been connected by mistake instead of being returned to the source of manufacture.

Inasmuch as I, at Uniontown, was the man who had direct charge, and was responsible for the grading of all the ware sent out, and for making report as to the justice of claims for imperfect ware from the customers, the firm there took care to see that I was familiar with the grade of ware
2 shipped by other people.

Q. Now, while you were at Uniontown, how many furnaces were you running?

A. The number varied at different times of the year. When we first started up we started with one furnace and then we added more furnaces; we generally kept about five furnaces in operation.

Q. How many tubs did you get from one furnace in twenty-four hours by the hand method?

A. We would get about eleven to twelve tubs a turn, and three turns would make about anywheres from thirty-three
3 to thirty-six tubs a day with the hand method.

Q. That is of what sort of tubs, the five year, the best tubs or the second class tubs?

A. Taken as the run of kiln, that is some of course would be first class and some second. We started out to make them all good, but then we never got eleven or twelve good ones out of a turn. We took them as they came.

Q. In other words, the tubs that come from the factory are all made by the same process, but the ones that turn out to be the best are graded the guaranteed tubs, and the others the seconds, is that right?

4 A. That used to be the practice, but of late years there has been a great many tubs made which were never intended, or which were never expected, to be five year tubs; they were never expected to be anything better than what is known as a competition tub.

Q. That is a very light tub?

A. It is generally a light tub.

Q. And the NEMO is that sort of tub?

A. A tub corresponding to the NEMO. Those tubs are never expected to be anything but competition tubs.

Q. You say in using the hand method you average about thirty-three to thirty-six tubs in twenty-four hours? 1

A. Yes.

Q. In using the Arrott dredger, how many do you make?

A. We would make from fifty-eight—I beg your pardon—we would make from forty-eight up to sixty. Just roughly we figured with the hand dredge that it would take three furnaces a day to make one hundred tubs, and with the Arrott dredger it would take four furnaces to make one hundred tubs.

Mr. CHRISTY: Three or four?

THE WITNESS: I beg your pardon, three and two. 2

BY Mr. GROSVENOR:

Q. Do you know anything about the output of other factories per furnace?

A. Well, in a general way, I do; I do not know all of them.

Q. Don't you find that your output is considerably below that per day of other factories? I am speaking now of the Uniontown factory.

THE WITNESS: You mean with the hand dredge or with the pneumatic dredger? 3

Q. Well, of either?

A. I do not believe it is below the output of the average plant. There may be exceptions; there may be plants turning out a larger output by both methods—in fact, I know plants turning out a larger output by hand than we, and I know plants turning out a larger output with the pneumatic dredger than we, but I believe those plants are an exception.

Q. You mean they are old well established plants?

A. Not necessarily.

Q. What plants had you in mind as having a larger output than your plant? 4

A. I understand that at one time—I am not familiar with the practice now—that the Zelienople plant of the Iron City Co. turned out more tubs by the hand method than we did.

Q. Turned out more than you did by the hand method?

A. Yes; but we always held that their tubs were not of the same grade as our tubs, and I know that the Monaca

1 plant of the United States Sanitary Mfg. Co. turned out more tubs using the pneumatic dredger than we did. In this case, I do not believe that their tubs are of inferior quality to what our tubs were. Their large output is due in part—

Q. Who are you talking of now?

A. The United States Sanitary Mfg. Co. Their large output is due in part to the fact that they use a different style furnace from what we used at Uniontown. The superintendent of their plant told me that they had turned out a hundred and three tubs on one furnace in twenty-four hours.

2 Q. This is the United States?

A. This is the United States Sanitary Mfg. Co.

Q. And you attributed that to the fact that they have a better furnace?

A. To the fact that they have a different furnace entirely.

Q. The character of the furnace is very important in making these articles, isn't it? What sort of furnace did you have at Uniontown?

A. We had a semi-muffled gas burning furnace, and at the United States plant at Monaca they used a double furnace; they used one furnace for bringing the tub, coated 3 with slush coat, up to a medium red heat; then the other section of that furnace is used for bringing the tub from the medium red heat up to bright red heat necessary for enameling, and this can be done in a couple of minutes. This second furnace is also used for cooking the enamel on the iron. They are able to make this great speed simply because they have a pneumatic dredger and the men are able to stand the work of making one tub right after another without any time for rest; they could not do it if they had to use the hand method of applying the enamel. That is at the Monaca plant. They are getting the utmost advantage 4 out of the use of the pneumatic dredger.

Q. Now, as a matter of fact, don't you know that the McCrum-Howell Co. plant at Uniontown is one of the smaller plants manufacturing sanitary enameled iron ware?

A. Yes.

Q. It is, isn't it?

A. Yes; it is one of the most efficient plants, though.

Q. And the McCrum-Howell Co., which is one of the list of defendants, is given a special discount—or preferentials

below those allowed by the other manufacturers, who are also defendants, do you know that? 1

A. I do not know that; I think it is very likely, because Mr. McCrum was a very good man at making a bargain.

Q. Now, what is the output that you heard the Iron City gets out per day?

A. I heard a couple of years back that one man would make twenty or twenty-two tubs—that is, one crew would make twenty to twenty-two tubs on a turn, using the hand dredge. I also heard at that time that they did no batching and made all the tubs in two dredgings and that they took them as they came. If a tub would come out with a pin hole in it they would simply set it aside and sell it as B grade. 2 They made no attempt to make high-grade tubs when working at that speed.

Q. How many times did you put your tubs into the furnace?

A. At Uniontown we put the tub in cold covered with the slush coat, then when the tub was at dull red heat it was brought out and turned around and the other end put in first. That would be twice. All tubs received two coats of enamel and a large majority of them received another thin coat for finishing up spots which happened to be a little blue, 3 or covering up pin holes or something like that and put back into the furnace again. That is all, I think, two coats to a tub and the majority of them received three coats.

Q. What do you mean by saying that the Iron City tubs only got two coats? A. Two coats of enamel.

Q. That is all that you gave yours.

A. The majority of ours received three coats. I have talked with men who have worked at the Iron City plant, and they said some of the tubs at Iron City were made with one coat, that is one coat of cover enamel. I have seen a considerable amount of the Iron City product, or rather I 4 used to see a considerable amount of the Iron City product, and we never—I never considered that their product was up in quality to the product we were making, and we always felt that the Iron City Co. were attempting to turn out a big product, a large amount of product, rather than a good product or high-grade product.

Q. Which do you consider of the greatest importance in the manufacture of enameled iron ware? I want to give you

several things. You have said that the slush coat is very important? A. Yes.

Q. And that is a secret in your business? A. Yes.

Q. You have also said that the enameling coat is very important? A. Yes.

Q. The making of the powder? A. Yes.

Q. That also is a secret in your business? A. Yes.

Q. You have also testified as to the value of the Arrott dredger, or the pneumatic dredger, as compared with the hand dredge, is that right? A. Yes.

Q. Now, of those three things—I want you to base your answer frankly on the study which you have given this matter—which of those do you consider the most important? Let me get it clearly in your mind as to what I want. Would you rather have a poor slush coat and the Arrott dredger, or would you rather have a first class slush coat, such as you prepared according to your formula for the enamel powder and the hand dredge?

A. Well, that is a hard question to answer, simply because they are both essential. It would be something like asking a man which leg he would rather do without.

Q. If the Arrott dredger is so essential, what would you consider its value to the trade?

A. I do not understand what you mean? Do you mean if I were running a plant of a certain size how much would I—

Q. No, supposing you owned the Arrott patent, what would you consider its worth in the trade?

Mr. CHRISTY: I object to that as improper and as not being proper cross examination.

Q. Would you be willing to sell it for $5,000?

A. No, I would not. I might sell it—that is, I think I would put it out on a royalty basis, allow it to be used on a royalty basis.

Q. That is you would continue to own the Arrott patent, and you would license all the manufacturers of enameled ware to use it, you still retaining the rights, is that right?

A. That would be my procedure; I do not know whether it would be wise or not.

Q. Supposing you were to sell it to another man to license other manufacturers, what would you sell it for?

Mr. CHRISTY: That question is objected to on the ground of incompetency, on the ground of its not being proper cross examination and because it is purely speculative. 1

THE WITNESS: For all I could get. That would all depend upon the circumstances. Now, if I were a rich man, or had rich backing, so that I could prevent anyone from infringing upon the use of my patent, I would be in a position to ask a large amount of money for it, but being as I am, a poor man, without money to fight law-suits, I would have to take whatever I could get. 2

Q. Do you know anything about this forming of the licensing arrangement under Mr. Wayman during the early part of 1910? My question is for this purpose: I want to know whether your position with the company was of a character to enable you to deal with others respecting entering into a license arrangement.

A. I did not catch the first part of the question?

Q. You were at the McCrum-Howell Co. until when?

A. Until July 1, 1909.

Q. Then you were with the Humphryes Mfg. Co. in 1910, were you not? 3

A. I went to work for the Humphryes Mfg. Co. June 20, 1910.

Q. Were they using the Arrott dredger at that time?

A. They were using the Arrott dredger during the daytime and an electric device, which they had worked up in their own plant, and which seemed to me to be an infringement of the Arrott patent, at night. I mentioned in my testimony before that I advised them to discontinue the use of their electric device on account of the fact that it was not efficient, and was not giving the production that could be obtained by the use of the pneumatic dredger. They objected to doing that; they said they would have to keep their boilers going during the night and hire a night engineer, which would cost them six or seven dollars a day to use the pneumatic dredger instead of the electrical device, but I told them results would justify that expense and more too. They took my advice and discontinued the use of the electrical device the rest of the time I was in their employ. As to the first part of your question, or rather as to the first part of your 4

1 former question, Mr. D. A. Carpenter told me when I went to work for them that he had entered into some sort of combination with the other manufacturers before I had entered their employ, but as to the terms, etc., I knew nothing.

Q. He just told you the result?

A. Yes, that they had entered into it.

Q. The Humphryes Mfg. Co. is one of the small companies, isn't it?

A. The Humphryes is a five furnace plant; its production is not large.

Q. Which companies are the leaders in the trade?

2 A. The Standard Sanitary Mfg. Co. I believe is the largest.

Q. What is the next?

A. The next would be either Wolf of Chicago, or the Iron City plant.

Q. What is the next?

Mr. CHRISTY: Unless this examination is for the purpose of testing the knowledge of the witness it is objected to as immaterial.

THE WITNESS: Kohler has a large production; I presume he would be next, or possibly equal to the

3 United States Sanitary Company's plant at Monaca.

Q. How many pounds of enameling powder did you use down there in the ordinary five foot size tub?

A. With the pneumatic dredger we figured twenty pounds of enamel to the tub; that included not only the enamel which actually stayed on the tub, but the incidental loss, that is the enamel that flew up in the air and was lost in the dust.

Q. With the hand dredge how much did you use?

A. Twenty-five pounds. The difference was not alto-

4 gether in the amount of enamel that stayed on the tub, but it was due also to the fact that when the men were working with a great deal more exertion, and had to be exposed to the heat a longer time, it was impossible to have them be so careful in regard to wasting the enameling powder.

Q. Do you know how much the other manufacturers use, how much powder?

A. I have heard claims; I have never been able to consult their books or to see accurately.

Q. Did you keep books at the McCrum-Howell Co. showing the exact amount used? 1

A. We kept track of the cost of the chemicals and the amount of enamel used each two weeks, and then subdivided that between tubs and small ware, etc.

Q. When did you make up this estimate that you used five pounds more by the hand method than by the automatic dredger? A. When?

Q. Did you make these calculations after you were notified to be here as a witness?

A. No, that was common talk at our Uniontown plant; that is what we figured we were saving; that is one of the 2 reasons that we tried so strenuously to avoid coming back to the use of the hand dredge.

The actual amount of saving in the use of the automatic dredger I do not consider in just the amount saved in wages, or the amount saved in the cost of enamel. It lies more in the fact that you can run your plant easier and keep up your production better, have less returned goods and have a better quality of ware, and can sell it easier. Of course, the actual saving is some item, but then that is a small part of the advantage gained by using the pneumatic dredger.

Q. How many of those savings, and particularly how 3 much of this improved ware did you attribute to the fact that you had improved your slush coat, had also made a change of powder and also changed the proportions of the several kinds of pig iron that went into the cupola?

A. As to the change of the pig iron I do not attribute any saving to that, except in the cost of the pig iron itself. As to the advantage gained by changing the slush coat and the enamel powder, it is hard to estimate that accurately, because we were making these other changes at the same time, and if you vary two things at the same time it is hard to say just exactly which is giving you your result. 4

Q. In other words, you were making these changes in slush and in powder, at the same time you were changing your dredges? A. Yes.

Q. In fact, when you first went to Uniontown that factory was really at an experimental stage, the first few months after it started, was it not?

A. We had experienced enamelers, the same as we had in Blairsville; we had men who had been working at the enameling business for a good many years.

1 Q. You did not make any changes then in your powder until you got your dredge, is that right?

A. No, I changed the enamel as soon as we started up at Uniontown—in fact, I changed the enamel the second day I arrived at Blairsville.

Q. You did not wait until you got a different dredge?

A. But—

Q. Answer my question. A. No, sir.

Q. Now, then, what did you mean by saying, as you did a question or two before, that the dredge enabled you to make changes in the powder, or to use a different powder,
2 when you had made these changes as soon as you went there? Did you make any further changes?

A. Yes, the changes I made when I first went to Blairsville were minor changes and I had to keep in mind all the time that the enamel must flow. That was a minor change and I could not make the radical change that I did make at Uniontown until after we adopted the use of the other dredge.

Q. What change did you make after you adopted the Arrott dredger?

A. I made an enamel which would not flow as much. I
3 did that because we had been having considerable trouble from chipping, due to beads on our ware and we wanted to avoid that chipping.

Q. Isn't it very important in making your powder to see that the powder contracts and expands evenly with the iron?

A. That is important, yes, sir.

Q. Isn't that one of the most important things in the selection of the character of your powder, to try to arrive at a powder in which the co-efficient of expansion—is that the term? A. That is the term that has been used.

Q. In which the co-efficient of expansion of your powder
4 and of your cast iron will be the same?

A. That is the theory that has been held up to the present time; that theory is in question at the present time. There have been accurate measurements made of the effect of composition or co-efficient of expansion, and the way the case stands now, it seems that when we change a composition so as to avoid crazing we are really not reducing the co-efficient of expansion, but we may be raising it.

So the question as to whether the co-efficient of expansion is the cause of crazing or not is not settled at the present

time. What you have said used to be accepted as the truth. 1

Q. If your powder does not contract and expand fairly evenly with your iron, you will have all sorts of trouble, won't you?

A. I am not sure about that. We have carried on some experiments at the university which seem to show that the rate of contraction on a glass and the body to which it is applied may be materially different and yet not cause crazing. There are other factors that enter into crazing besides the comparative rate of expansion and contraction. What these factors are has not been fully determined at the present time. 2

Q. Supposing, professor, a pupil came to you at your university and said, I am going to go to a factory, an enameled ware factory, and I want you to tell me how to make some proper enameling powder. What is the first thing he has got to do, to try to do, in making up his powder? You have mentioned over twenty-five or thirty ingredients, now he must mix all those ingredients with the particular object in view, namely, to get a particular character of powder?

A. Yes.

Q. To conform to the cast iron? A. Yes.

Q. Now what would be your instructions to him? 3

A. My instructions would be as follows: get the receipt they are using at that plant at the present time, and if it is not satisfactory change it in various ways so as to make it satisfactory. Now, I would tell him what to do to stop crazing, you understand, and what ingredients to add to stop crazing, which would stop crazing in some cases, but I would not say that you are thereby reducing the co-efficient of expansion—in other words, we know how to stop crazing, or how to cause crazing, but we do not know whether we are doing it by changing the co-efficient of expansion, or whether we are doing it by bringing about other conditions in the 4 enamel.

Q. Supposing that he found pin holes, and these other things, rolls, and beads after using the receipt which he found at the factory, and then came back to you, would you tell him what to do?

A. I would tell him in a general way what to do. I would tell him the various things that may be causing the pinholes; for instance, I would tell him to investigate as to which one of these causes seemed to be active in the plant in

Q. As a matter of fact, Mr. Staley, you could not go into a jobber's store room and pick out ware that is made by the hand dredge and pick out ware that is made by the pneumatic dredger, could you?

A. No, but I could pick out the good tubs and the bad tubs.

Q. They are made both ways?

A. Yes, and if a man had bought the run of kiln, bought tubs as they come from the kiln, I feel pretty confident that I would find more poor ones among those made by the hand dredge than among those made by the pneumatic dredger. There was remarkable improvement in the quality of our ware after we adopted the use of the pneumatic dredger.

Q. Was there any increase in output?

A. There was a decided increase in output.

Examination of the Witness Suspended.

Thereupon, at 4:10 P. M. the hearing was adjourned to meet again tomorrow morning, March 24, 1911, at 10:30 A. M. at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2
10:30 o'clock A. M., March 24, 1911.

Met pursuant to adjournment at 10:30 A. M., Federal Building, Pittsburgh, Pa., at which time and place the following depositions were taken on behalf of the Standard Sanitary Manufacturing Company and other defendants:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
representing the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq., and 3
HARTWELL P. HEATH, Esq.,
representing the Standard Sanitary Manufacturing Company, *et al.*

HOMER F. STALEY, a witness having heretofore testified, and suspended on account of adjournment yesterday, resumed the stand and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (resumed):

Q. On page 1776 of yesterday's record this question was asked you: "Do you know anything about this forming of 4
the licensing arrangement under Mr. Wayman during the early part of 1910? My question is for this purpose: I want to know whether your position with the company was of a character to enable you to deal with others respecting entering into a license arrangement." You did not answer that question, and I would like to have you answer it now.

A. My position was not of such a character. I was simply informed that they had entered into an arrangement—

Q. I do not want that; I do not want hearsay. Did you or not have anything to do with Mr. Wayman?

A. I had nothing to do with the arrangement.

Q. Did you have anything to do with the other manufacturers? A. No, sir.

Q. In regard to this arrangement? A. I had not.

Q. In reference to the weight of the dredges, I would like to ask you a question: as I understand it, your hand dredge, your larger dredge, was supported by counterweight, is that correct? A. It is.

Q. And the automatic dredger is supported in the same way? A. It is.

Q. So that as far as weight is concerned, the weight is supported equally in the case of both dredges, only in the case of the hand dredge the operator can only use one hand to guide it, whereas in the case of the automatic dredger he uses both hands, that is correct, is it not?

A. That is correct. In addition, I would say that the actual weight of the hand dredge is liable to be a little greater, but that would make but a slight difference as each weight is counterpoised anyhow.

Q. There would be a slight difference? A. Yes.

RE-DIRECT EXAMINATION BY MR. CHRISTY:

Q. What is the reputation of the ceramic engineering department at the Ohio State University?

A. It has the reputation at the present time of being the foremost school in ceramic engineering in America.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

GEORGE J. BLACKHAM, a witness produced on behalf 1
of the Standard Sanitary Mfg. Company, *et al.*, having first been duly cautioned and sworn by the examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. How old are you, Mr. Blackham?

A. I am 34 years of age.

Q. Where do you live? A. At Uniontown, Pa.

Q. Will you kindly tell us in what business you are now engaged? A. In the manufacture of enameled ware.

Q. By what company? A. For the McCrum-Howell Co. 2

Q. And in what position? A. As manager.

Q. How long have you been maneger of the McCrum-Howell Company? A. For about three years.

Q. Were you in the enamel business prior to that time?

A. I was.

Q. Suppose you just state when you went into the enameling business, and what you did, giving the dates as nearly as you can fix them.

A. Well I have been in it all my life, that is from the time I commenced to work.

Q. Well, I mean where did you start and about when and 3
follow it right down to the present time?

A. I worked for the Standard Manufacturing Co. at Allegheny eighteen years ago for about three years; then at Dawes and Myler at New Brighton for about two years; about six months for the Boggs-Jones Company at Sharpsburg; about three years for the Victor Manufacturing Co. at Aliquippa, Pa.; about a year for the Louis Lipp Co. in Cincinnati; two years for the Iron City Sanitary Mfg. Co. in Zelienople; about three years for the McCrum-Howell Co. in Blairsville; two years for the Wheeling Enameling Company in Wheeling, and four years for the McCrum-Howell 4
Co. in Uniontown.

Q. That is the last four years you have been at Uniontown? A. Yes, sir.

Q. And before that you were at Wheeling? A. Yes, sir.

Q. And before that at Blairsville? A. Yes.

Q. When did you leave Blairsville?

A. In 1906, I think.

Q. How did you happen to leave there?

1 A. On account of the factory burning down at Blairsville.

Q. What were they using at Blairsville at the time that you left, or immediately before the time that you left, for enameling tubs and other articles? A. The hand dredge.

Q. What did they use at the Wheeling Enameling Company for the same purpose?

A. They used the hand dredge.

Q. Will you describe that dredge, the hand dredge, in a general way?

A. Well, the hand dredge was a dredge with a handle of
2 about five feet long, supported by counterbalance; it was held in the left hand and guided by the left hand, and the powder was sieved on the ware by means of a tapper.

Q. In which hand was the tapper held by the operator?

A. The tapper was held in the right hand of the operator or enameler.

Q. About what date was that when you came back to Uniontown? A. About 1907.

Q. And what did they use at Uniontown when you came back for sifting the enamel? A. They used an air dredger.

Q. Please describe that air dredger in a general way?

3 A. The air dredger was a dredge with a handle about 5 feet long with an air hammer attached to one end that vibrated the sieve. The enamelers simply held the dredger in both hands, and the hammer, or vibrator, caused the powder to flow over the ware.

Q. Did you find any advantage in the use of the air dredger over the hand dredge?

A. Yes, quite an advantage.

Q. Regarding the flow of the enamel, how was it?

A. The flow of the enamel with the air dredger was even and continuous; with the hand dredge the flow of the enamel
4 is uneven.

Q. How was it as regards the speed of enameling a tub?

A. With the air dredger it is done more quickly than with the hand dredge.

Q. Can you give us some idea of how more quickly it is done.

A. Well, as compared with the hand dredge—with the hand dredge the enameler would enamel twelve tubs in eight hours and with the air dredger the enameler would enamel from sixteen to eighteen tubs in the same length of time.

Q. Did the enameler have as much loss with the air dredger as with the hand dredge? 1

A. No, he did not have as much loss with the air dredger.

Q. Do you know about what your present percentage of loss is with the air dredger?

A. Our loss is less than 1 per cent. with the air dredger.

Q. How was it upon the workman? Was it easier with the air dredger than with the hand dredge, or just as hard with it?

A. It is much easier to enamel by the use of the air dredger.

Q. Why is that? 2

Q. Because the operator hasn't anything to do except to guide the dredge with the air dredger. There is no work connected with the vibrating of it, and the operator has only, or the enameler has only to guide the dredge over the ware.

Q. Do you use as skilled labor with the air dredger as you used formerly with the hand dredge? A. No, sir.

Q. What class of labor do you use now?

A. We are using foreign labor now with the air dredger.

Q. What class of labor did you use with the hand dredge?

A. We used American labor with the hand dredge. 3

Q. Do you pay your enamelers as much per piece now as formerly? A. No, sir.

Q. Do they make as much money now with the air dredger as they did with the hand dredge?

A. They make more money with the air dredger than they did before.

Q. How about the training of the men,—was it as difficult with the air dredger to train the men to enamel as with the hand dredge?

A. It was not as difficult with the air dredger as it was with the hand dredge. 4

Q. How many men did you have to a furnace when using the hand dredge? A. We had three men on a furnace.

Q. And what would each of those men do?

A. One man turned the table and opened the door; another man dredged the rim of a bath tub, and the third man dredged the inside of the bath tub.

Q. How many men do you have on the furnace with the air dredger? A. Two men.

Q. And what would each of those do?

1 A. One dredges the rim and the other dredges the inside of the tub. In using the air dredger we also have an air table, a table operated by air.

Q. And one of the men operates the table how?

A. And the enameler operates the table.

Mr. GROSVENOR: You mean by "the enameler," the man who does the inside work?

THE WITNESS: Yes, he operates the table with a button, with his feet.

BY Mr. CHRISTY:

2 Q. How about the furnace door?

A. The furnace door is operated by a button; it is operated by air, and the man operates it with his feet.

Q. How does the quality of the ware made by the air dredger compare with the ware made by the hand dredge?

A. The quality of the ware made with the air dredger is superior to that made by the hand dredge.

Q. And for what reason?

A. For the reason that it is much smoother.

CROSS EXAMINATION BY Mr. GROSVENOR:

3 Q. Did you have anything to do, while you were at the McCrum-Howell Co., with the subject of obtaining a license to use the Arrott patent? A. No, sir.

Q. Either from the Standard Sanitary Mfg. Co. or from E. L. Wayman? A. No, sir.

Q. You do not know anything about those matters?

A. I was not consulted at all.

Q. Now you have spoken about this output, you say you would make from 12 to 13 to 14 tubs—

A. About twelve tubs with the hand dredge.

Q. In a turn? A. Yes.

4 Q. In a turn of eight hours? A. Yes.

Q. And from sixteen to eighteen by the air dredger in a turn? A. Yes.

Q. Now, as you went to these different factories that you have named—you have named six or seven of them, did you find that the output varied?

A. No, twelve tubs seem to be the general average for eight hours with the hand dredge.

Q. No matter where it was?

A. No matter where it was. 1

Q. You have used the air dredge only at Uniontown, is that right? A. That is correct.

Q. Then the maximum tubs turned out by the hand dredge at plants where you have worked is about 36 tubs in 24 hours? A. Yes, sir.

Q. What were they using at Allegheny eighteen years ago when you were there three years?

A. They were using the hand dredge.

Q. And what were they using at Dawes & Myler when you were there two years? A. The hand dredge.

Q. Were you an enameler? A. No, sir, I was a molder. 2

Q. When you were at the Iron City plant at Zelienople, what were they using?

A. They were using the hand dredge.

Q. A hand dredge supported by a counterpoise?

A. Yes, sir.

Q. This has been eight or nine years ago? A. It has.

Q. Was it then known as the Iron City plant?

A. It was.

Q. Was it run under the present management?

A. No, sir, it was not running under the present management. 3

Q. Now, you have said that the ware is better when you use the air dredger? A. Yes.

Q. By that you mean that it is more likely that you will have a good tub when you use that air dredger?

A. It is more likely that we get a good tub when we use the air dredger.

Q. But when you do get a good tub with a hand dredge it is just as good as a tub made by the air dredger, is it not?

A. It is.

Q. Then my understanding of your answer on direct examination, in reply to a question of counsel regarding quality, is that you simply meant that the proportion of the better class of tubs is greater with the air dredger than it is with the hand dredge? 4

A. That is correct, except with the use of the air dredger a tub is smoother than one made with the hand dredge; the tub is smoother; the general appearance of the tub is smoother when it is made with the air dredger.

Q. You have testified that with the hand dredge you used American labor? A. Yes.

1 Q. And now with the air dredger you are using foreign labor? A. Yes.

Q. But that the workmen now make more money with the air dredger?

A. The workmen make more money with the air dredger than they did with the hand dredge.

Q. Do you have charge of the making of the powder?

A. I do.

Q. You succeeded Mr. Staley? A. I did.

Q. Do you have charge of the making of the slush also?

A. I make the slush.

2 Q. Do you consider the making of the slush an important part in the enameling of ware? A. Very important.

Q. And the application of the slush is important, is it not? A. It is.

Q. And the firing? A. Is very important.

Q. Those are as important matters as there are in the manufacture of sanitary enameled iron ware?

A. Yes, those are as important as any of the others, and even more so.

Q. How about the making of the powder, is that important? A. Very important.

3 Q. And those are secrets of the business, aren't they?

A. They are considered so.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Even though it is true, as you say, that the making of the slush, and the enameling powder, and the firing are all important matters, does that in any way affect your testimony as to the importance and advantage of the use of the air dredger?

A. It does not affect my testimony in the least; it does not have any bearing on the dredge.

4 RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Now, Mr. Blackham, if you used your present slush coat and had a good powder, isn't it possible to make a commercial, salable article by using the hand dredge? A. It is.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

Thereupon— 1

CHARLES E. WILKINSON, a witness produced on behalf of the Standard Sanitary Manufacturing Co., *et al.*, after first being duly cautioned and sworn by the Examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. How old are you? A. Twenty-eight years old.

Q. Where do you live? A. Uniontown, Pa.

Q. What is your business at this time?

A. Enameling foreman.

Q. For what works? 2

A. The McCrum-Howell Co. at Uniontown, Pa.

Q. How long have you been with the McCrum-Howell Company? A. A little over four years.

Q. They are at Uniontown? A. Yes.

Q. What did you do before you went with them?

A. Then I worked two years for the Columbia Plate Glass Co. at Blairsville, Pa.

Q. What did you do before that?

A. I worked two years for the McCrum-Howell Co. in Blairsville, Pa.

Q. You left Blairsville when? A. In January, 1907. 3

Q. When did you leave the McCrum-Howell Co. at Blairsville and go with the Plate Glass Company?

A. In February of 1905.

Q. And why did you make that change?

A. Well, I wasn't working steady and I got a chance of a better position.

Q. Oh, I understood that you were changed on account of the fire? A. No.

Q. When did the fire occur?

A. The fire occurred in June or July, I believe; it occurred some months after I had left. 4

Q. When you were working for the McCrum-Howell Co. at Blairsville, how were you employed?

A. At the time that I left I was employed as a tub enameler.

Q. What were you using there at that time for spreading the enamel on the tub?

A. We were using the hand dredge.

Q. Just describe that hand dredge in a general way, please.

1 A. Well, it was a 12-inch dredge with a 5-foot wooden handle on it; I would hold it in my left hand by gripping it with my left hand and arm and guide it over the top and beat the dredge with the tapper, an oblong tapper, and that sieved the powder on the tub.

Q. You held the tapper in which hand?

A. My right hand.

Q. When you went back to the McCrum-Howell Co. at Uniontown what position did you take?

A. Enameling tubs.

Q. And what did you use then for spreading the enamel
2 on the tub? A. I used the air dredger.

Q. Describe that air dredger in a general way, please.

A. Well, the air dredger you held in both hands; I would hold the handle of the dredge with my right hand, and would operate the hammer with my left hand; I have practically got a grip with both hands, because you have to hold the button to operate the hammer.

Q. The hammer is just an extension of the upper end of the handle, is it not?

A. Yes, it is all practically one piece.

Q. And as long as you held your finger on the button the
3 enamel was agitated and vibrated through the sieve?

A. Yes.

Q. As regards the labor of operating these two dredges, how do they compare?

A. It is much easier to enamel with the air dredger than it is to enamel with the hand dredge.

Q. Does it take any more skill with the hand dredge than with the air dredger? A. It does.

Q. Where did the skill come in, mainly?

A. In the hand dredge?

Q. In the hand dredge.

4 A. Well, in learning to guide the dredge with the left hand and in becoming accustomed to using the tapper.

Q. Do you have to tap fast?

A. Yes, that was the best way to do.

Q. Why did you have to tap fast?

A. Well, the faster you tapped, the more evenly you got the enamel on.

Q. Regarding this evenness of enamel, how did the air dredger compare with the hand dredge?

A. The air dredger is much better than the hand dredge.

Q. The taps are faster? 1

A. Yes, and it has a more continuous vibration than the hand dredge.

Q. Does this have any effect on the quality of the ware?

A. It did with me.

Q. In what way?

A. Why, you can make nicer tubs with the air dredger than with the hand dredge.

Q. How do you mean by "nicer?" A. Smoother.

Q. How did the number of tubs that you made with the two dredges compare in the same time?

A. I could make more with the air dredger than I could 2 with the hand dredge.

Q. Do you remember how many you made in a turn with the hand dredge, in an eight-hour turn. A. Twelve tubs.

Q. And do you remember how many with the air dredger in the same time?

A. Sixteen is the amount when I was working.

Q. You liked the air dredger better than the hand dredge?

A. I do.

Q. I suppose you always lost some tubs when you were an enameler? A. Yes.

Q. When did you get the greater loss, with the hand 3 dredge or with the air dredger?

A. I had the greater loss with the hand dredge than with the air dredger.

Q. Have you any way of telling about how many tubs you would lose in a turn with the hand dredge?

A. Well, I should say—

Q. I do not want you to guess, but I would like you to give it with reasonable accuracy?

A. I think it was about 5 per cent.

Mr. GROSVENOR: You think it was 5 per cent. loss with the hand dredge? 4

A. Yes.

BY MR. CHRISTY:

Q. Do you know what the loss is now at the McCrum-Howell Co. using the air dredger in the enameling room?

A. I do.

Q. What is it? A. About 1 per cent.

Q. Is there any difference in the carefulness with which

1 tubs are inspected now with the air dredger as compared with the hand dredge? A. There is.

Q. How is it now?

A. They are a great deal stricter now and the ware has to be better than when I was enameling with the hand dredge.

Q. What did you say your present position was?

A. Enameling foreman of the McCrum-Howell Company.

Q. About when were you made foreman?

A. In July, 1908, I believe.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Mr. Wilkinson, did you know anything about the entering into a licensing agreement to use the air dredger in the year 1910, on the part of your company? A. No, sir.

Q. You did not have any dealings with the Standard?

A. No, sir.

Q. Or other companies in regard to that? A. No, sir.

Q. Or with Mr. Wayman? A. No, sir.

Q. You are the enameling foreman for the McCrum-Howell Co.? A. Yes, sir.

Q. And have been since July, 1908? A. Yes, sir.

Q. Did you go to the factory at Uniontown about as soon
3 as it started? A. Why, yes, sir.

Q. How many foremen have you at the works now? You have the enameling foreman, is there any other foreman on any other branch of the works? A. Oh, yes.

Q. What other foremen are there?

A. Well, there is a night foreman in the enameling room. There is a foreman in the packing room; there is a foreman in the cleaning room and a foreman in the foundry.

Q. Do you have charge of the making of the powder there? A. No, sir.

Q. During all the time you had been there has there been
4 a foreman of the enameling room?

A. No, sir, I was the first man as foreman in the enameling room.

Q. They did not have a foreman before that? A. No, sir.

Q. For a time? A. No, sir.

Q. But since July, 1908, you have been foreman of the enameling room? A. I have.

Q. And in that time there has been a foreman at night also? A. No.

Q. Since when has there been a foreman at night in the enameling room? 1

A. As near as I can remember the night foreman was put on in April or May of 1909.

Q. Before that time there had not been any night foreman? A. No, sir.

Q. Now, when the company first started up—I mean by "the company," the new factory, you understand? A. Yes.

Q. When the new factory commenced in the spring of 1907 did they have a foreman for the enameling room?

A. No, sir.

Q. Neither by day or by night? A. No, sir. 2

Q. Do you recall using the hand dredge for a few months at the Uniontown plant at the beginning of 1907?

A. I only used it when the air dredger wouldn't work.

Q. Mr. Staley testified yesterday that there had been a lay-off of foremen by virtue of the use of the air dredger, you do not know anything about that, do you?

A. When I came there—

Q. Came to Uniontown?

A. When I came to Uniontown there was no foreman in the enameling room that I know of. Mr. Staley was my boss. 3

Q. But there is a foreman in the enameling room now?

A. Yes.

Q. And there has been since July of 1908? A. Yes, sir.

Q. What are Mr. Blackham's duties, is he the general boss? A. He is.

Q. He succeeded Mr. Staley, didn't he?

A. As mixer he did.

Q. By mixer you mean what? A. Making the powder.

Q. And slush coat? A. Yes.

Q. Who took over the other duties?

A. Well, Mr. Blackham looks after all of them now. 4

Q. You testified on direct examination that with the hand dredge you lost about five per cent. of the tubs?

A. That is my—

Q. That is as near as you can estimate it? A. Yes.

Q. Then the 95 per cent. represented tubs that were successful? A. Well—

Q. I mean that were salable? A. Yes, that were salable.

Q. And today 99 per cent. of them are salable?

A. Yes, sir.

1 Q. You did then make with the hand dredge commercial, salable articles, is that right? A. I guess so.

Q. What is that? A. The company accepted them.

Q. And the company sold them? A. I suppose so.

Q. Have you been using the hand dredge within the last four years with the McCrum-Howell Company?

A. No, sir, only in cases where the air had played out and just to finish out a piece of ware I used it.

Q. You keep them ready in case something would happen? A. No, sir.

Q. You do not?

2 A. No, sir, not now; that was when I first went there.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Do you remember when that change from American labor to foreign labor was made at Uniontown?

A. Yes, sir.

Q. About when was that? A. That was in July, 1908.

Q. That was when you were made foreman?

A. Yes, sir.

Q. When they were using American labor they did not need a foreman? A. No, sir.

3 Q. And only put in a foreman when they commenced to use foreign labor, is that right? A. Yes.

Q. When you went to work at Uniontown was the factory already equipped with air dredgers? A. Yes.

Q. Did you go right at the start?

A. No, sir, they started to enamel in October, I believe of 1906.

Q. And you went when? A. I went in January, 1907.

Q. You say that at first when they commenced to use the air dredger at Uniontown that you occasionally used the hand dredge to finish a tub when the air dredger was broken

4 down? A. Yes.

Q. You did that yourself? A. Yes.

Q. Did the other men generally do that? A. No, sir.

Q. Why? A. They didn't know how.

Q. You were the only one using the hand dredge?

A. Yes.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: Since I have heard this witness's testimony it would seem that Mr. Staley is not quite clear in reference to the foremen in the enameling room. 1

Mr. CHRISTY: I will recall him.

Mr. GROSVENOR: I think that would be better. I will ask him a few questions.

Mr. CHRISTY: I may as well examine him.

HOMER F. STALEY (recalled):

DIRECT EXAMINATION BY Mr. CHRISTY: 2

Q. You have heard the testimony of the last witness, Prof. Staley, about the matter of foremen at Uniontown, did you not? A. I did.

Q. Have you anything to say on that point?

A. The fact is that we had two foremen at Blairsville, and at Uniontown we had no foreman in the enameling room until Mr. Wilkinson was made day foreman in 1908. The reason for that was because we changed from American labor to foreign labor, practically unskilled labor, as very few of the men had any experience in the enameling business. Mr. Wilkinson was not only the foreman but the instructor in the application of the enamel. Before that, in addition to my other duties as superintendent, I had taken care of the labor, in bossing the men, etc., in the enameling room. Does that make it clear now? 3

Mr. CHRISTY: I think that is clear, as far as I am concerned.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Now, you said in your testimony yesterday at page 1732: "at Blairsville we had, in addition to the superintendent of the plant, a day foreman and a night foreman in our enameling room. At Uniontown, when I was acting as superintendent, I was able to turn out a larger production without a foreman, either by day or by night. The actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month. Q. And do I understand that this last saving that you have mentioned was directly due to the substitution of the pneumatic dredger for the hand dredge? A. It was, counting the 4

1 fact that these auxiliary aids could be used with the pneumatic dredger and could not be used with the hand dredge." Now, you were at Uniontown in July, 1908, were you?

A. I was at Uniontown in July 1908.

Q. Then at the time that you left there, as a matter of fact, there was a day foreman and night foreman in your enameling room.

A. At the time I left. I said at Uniontown we were able to do without the foremen due to the change in dredgers with the same class of labor. Now, when we changed our class of labor, due to the fact that we did change our
2 class of labor we had to put on foremen. That was done in July, 1908. If we had continued with the same class of labor that we had been using up to July, 1908, in Uniontown, or the same class of labor that we had used in Blairsville, we would not have had to put on a foreman.

Q. Do you think your answer as you gave it yesterday is entirely fair? Doesn't it give the impression that you had permanently done away with the foremen, both by day and by night, in your enameling room, as you gave your testimony yesterday?

A. I certainly did not intend to be unfair.

3 Q. And now you qualify your testimony to mean that only where you had American labor you required no foreman?

A. Where we had skilled labor we required no foreman, that is what I wish to say.

Q. Then this saving of salary is not now being accomplished?

A. The saving of salaries is not being accomplished because the advantage gained by the change from one dredger to the other dredger has been counter-balanced by the change from American to foreign labor, but it was ac-
4 complished for something like two years at Uniontown.

Q. You, in your testimony yesterday, said: "the actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month?" A. Yes.

Q. That saving occurred then only during that period?

A. Only during the period we kept the same class of labor.

Q. And are these foreign workmen now employed making more than the Americans formerly made with the hand dredge?

A. I do not know now. I have not been at the plant since 1909, July, 1909, so I cannot speak for the present time. 1

Q. When did you put in foreign labor?

A. In July, 1908.

Q. Did the wages of these men using the air dredger gain or decrease as compared with the wages made by the American on the hand dredge?

A. As soon as the foreign labor became ordinarily proficient in the enameling of tubs or ware they made more wages. At first, a man would not make as much, because we had to take him out of the street, or take a laborer off of the pig iron pile and teach him the business. While he was learning he did not make as much, but after he was proficient he made more than the men did who worked on the hand method of enameling. 2

There is one other question in the record which was asked me that I overlooked to answer. That was on the point of whether the furnace was an important item in the enameling of ware. If you care to have me, I will answer that question now.

Mr. GROSVENOR: I have no objection. 3

THE WITNESS: Of course, it is important to have a fairly good furnace, one in which, for instance, the flames do not come in direct contact with the piece of enameled ware being enameled, but the furnaces, or furnace, can vary widely in type and mode of construction.

I have used furnaces burning gas with the closed muffler, that is where the flames do not go into the space, or room, where the piece of ware was at all, and I have used furnaces burning gas with semi-muffled top, that is just bagged walls, to keep the flame from getting too close to the ware, but with the top of the room where the ware was being heated open so that the flame did not writhe, or flow through the space above the piece of ware; I have used muffled furnaces, closed muffles, using coal and I got good ware and was able to get good ware with any one of that style of furnace. The type of furnace can vary widely; the kind of fuel used can vary within very wide limits. 4

1 Q. Isn't it a fact that the output of the furnace is very largely dependent upon the character of the furnace?

A. With a given amount of fuel it is, but you can get as much output with one furnace as you can with another if you burn a little more fuel in one than you did in the other, that is a semi-muffled type furnace does not require as much fuel as a closed muffled type, that is the open semi-muffled does not require as much as the closed. You can get about as much ware from a closed muffled as you can from the semi-muffled, but you have to burn more fuel and your repair bill for your furnace will be larger.

2 Q. As you went around to these several plants in February of this year, did you find the general output of the furnaces the same throughout?

A. The output of the furnaces seemed to be just about the same, except, as I stated yesterday, the output per furnace, or rather per double furnace, at the United States plant was a great deal larger than any of the other plants due to the fact that they used a patented furnace consisting of two compartments.

Q. What is the output of the Colwell Lead Company per furnace? A. May I refer to my note book?

3 Q. Does it contain the notes of your visit there?

A. It does, yes, notes taken down at the time.

Q. You may look at it.

(Witness here refers to book.)

A. I do not have it. As I remember—I would not wish to state this as a definite fact—it was about 16 tubs.

Q. Sixteen tubs a turn?

A. Yes; The Colwell Lead Co., though, can hardly be classed as one of the firms which is getting the full benefit of the use of the pneumatic dredger.

Q. In that case was the small output due to the fact

4 that they did not keep their furnace sufficiently supplied with fuel?

A. No, the small—I do not consider sixteen tubs a turn especially small—but what I wished to say about the Colwell Lead Company was while they had the pneumatic dredgers in their plant, yet, they did not have the pneumatic dredgers fitted up in proper shape and did not have any of the auxiliary aids in manufacture which are necessary to get the full benefit of the pneumatic dredger.

any of the auxiliary aids in manufacture which are necessary 1
to get the full benefit of the pneumatic dredger.

Q. Do you know whether those aids are patented?

A. The use of the aids is not patented, as I understand it; some particular styles of construction of these various aids are patented.

Q. Now, take the next plant that you went over, you went over the Mott Iron Works? A. Yes.

Q. What is their output per furnace?

A. Sixteen tubs, about sixteen tubs. Mr. Ditheridge said —I was merely going to say that he told me how much they used to get by the hand dredge and how much they are 2
getting now.

Q. Their output was sixteen tubs? A. Yes.

Q. You went over the Allegheny plant of the Standard Sanitary Mfg. Co., did you not? A. Yes.

Q. What was the output there?

A. I did not inquire as to the output at the Allegheny plant.

Q. What was it at the New Brighton plant, did you go there? A. I did not go there.

Q. What other plant have you been over?

A. I have been over the plant of the Humphryes Mfg. 3
Co. at Mansfield.

Q. What is their output per turn?

A. It would vary from fourteen to eighteen tubs.

Q. Have you been over any others?

A. No. I have been over Mr. Cook's plant at Blairsville, but I did not inquire as to how many tubs he was making. I am not able to say.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Having in mind the fact that the United States Sanitary Co., by reason of its improved furnace, has the larger 4
output,—I believe you stated that? A. Yes.

Q. It is true, is it not, that so far as commercial advantages are concerned, this pneumatic dredger can be operated with enameled tubs about as fast as any commercial form of furnace can heat the tubs?

A. Yes, I believe that is true. I believe that the United States Co. are heating tubs as fast as it is possible to make enamel ware. I do not believe their speed limit will ever be materially exceeded.

1 Examination of the Witness Concluded.

Signature Waived.

Mr. GROSVENOR: Mr. Staley, by referring to his note-book, finds that he can answer the question as to the output of the Mott plant. I would like to have him answer that.

HOMER F. STALEY (recalled):

THE WITNESS: I find by referring to my note book that Mr. Ditheridge told me that at the J. L. 2 Mott plant they used to get fifteen to sixteen tubs per turn before the use of the pneumatic dredger, and now they get twelve to twenty-two tubs using the pneumatic dredger. As I stated before in my testimony, they do not use the pneumatic dredger in exactly the form it is used in other plants. It is a modification of the method of using the Arrott dredger.

Mr. CHRISTY: Counsel for the defendants objects to this testimony as purely hearsay.

Examination of the Witness Concluded.

3 Signature Waived.

Mr. NOBLE: I have a telegram here from Mr. Honeyman, as follows: "will it be convenient to all parties for me to take some testimony on Monday next at Pittsburgh, if so, I will arrange at once. Answer." That came to Mr. Wayman's office last night for me. Is that agreeable, gentlemen?

Mr. GROSVENOR: It is all right for us.

Mr. NOBLE: Now, we have some more witnesses we are going to call, so if it is agreeable for you to 4 go ahead on Monday I can arrange to have the witnesses here.

Mr. GROSVENOR: Have a number of them here, so we will not have to waste any time. When shall we meet Monday?

Mr. NOBLE: At 11 o'clock in this room.

Thereupon, at 12:40 P. M. the taking of testimony was then adjourned until Monday, March 27, 1911, at the same place, 309 Federal Building, at 11 o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2
March 27, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 27th day of March, 1911, at 11:00 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq.,
HARTWELL P. HEATH, Esq., 3
on behalf of the Standard Sanitary Mfg. Co., *et al.*

No witnesses being produced, the taking of testimony was adjourned until the following morning, March 28, 1911, at 11 o'clock, at the same place.

4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 Federal Building, Pittsburgh, Pa.,
March 28, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 28th day of March, 1911, at 11 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.

3 Mr. Francis J. Tomasson, representing Marshall A. Christy, Esq., appeared and stated that the witness who was expected from New York had not arrived, and requested on behalf of Mr. Christy that the hearing be adjourned until 1 P. M.

Whereupon, the hearing was then adjourned until 1 o'clock P. M., at the same place.

4

Federal Building, Pittsburgh, Pa., 1
March 28, 1911, 1 o'clock P. M.

Pursuant to adjournment, the taking of evidence was then resumed, at 1 o'clock P. M., at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
MARSHALL A. CHRISTY, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., 2
et al.

EDWARD M. BENTLEY, a witness of competent age, produced on behalf of the Standard Sanitary Mfg. Co., *et al.*, having been first duly cautioned and sworn by the Examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. Please state your name, address, age and occupation?

A. Edward M. Bentley; my residence is at Lawrence, New York; age, 52; occupation, mechanical and electrical engineer. 3

Q. Please state what experience you have had to tend to qualify you to testify as a witness and give testimony of an expert nature respecting patents for inventions and mechanical devices covered thereby?

A. I was educated at Yale College—

MR. GROSVENOR: Will you speak a little louder?

A. (Continuing): —where I was graduated in 1880. I was then for several years an Assistant Examiner in the United States Patent Office, where it was my duty to study and understand the various inventions submitted with applications 4
for patents, and to compare the same with such similar devices as I might find in the prior art, in order to ascertain the degree of novelty and patentability in the inventions submitted. I was then engaged for six years in the manufacturing business as one of the originators and engineers of the Bentley-Knight Electric Railway Co., which built a number of the first successful electric railways in the United States. During my connection with this company, I was engaged in the designing and constructing of mechanical and electrical ap-

1 paratus and in the installation of electric railway appliances. I also had charge of the matter of patents upon the inventions owned and controlled by the company, securing patents for such inventions and also considering the question of possible infringements upon patents owned by others.

In 1889 the Bentley-Knight Co. was absorbed by the Thomson-Houston Co., of Boston, which was soon absorbed in turn by the General Electric Co. of New York. I became connected with the Thomson-Houston Co. and the General Electric Co. and continued with them for five years, as manager of the department of inventions and patents.

2 Mr. GROSVENOR: It seems to me that all these qualifications stated are not material. The question here is not the validity of any patent or any patent question. It seems to me the qualification should be in relation to some expert knowledge of the making of enameled ware or something of that sort. My objection is that we are losing time. We have not here in question the consideration of the validity of the Arrott patent. That is established. We are not contesting that.

3 Mr. CHRISTY: As I read the Government's petition in this case, there is one question raised which has to do with the scope of patents, and to which some testimony should be addressed. As to the qualification of the witness to testify in this particular art, I expect to develop that in a succeeding question.

THE WITNESS (continuing): —During this time I was obliged to maintain practical familiarity with mechanical and electrical apparatus, and with the methods of manufacture. I also had charge of the matter of securing the patents on inventions made by the many engineers in the com-
4 pany's employ, and also supervised the apparatus of the company with respect to the patents which it owned and those which it did not own. I had charge of all technical matters involved in the extensive patent litigation in which the company was involved.

Since 1894 I have been practicing my present profession independently, and have been continuously engaged in studying and investigating mechanical and electrical apparatus and technical methods of many kinds, particularly with a

view to reporting upon and testifying in regard to the character, construction and action of such apparatus. 1

Q. Please state what experience, if any, you have had in connection with the subject to which this case relates, namely, the application to metallic sanitary ware of enamel in powdered form, and with particular reference to the Arrott patent, which has been referred to herein, and which is number 633,941?

A. My acquaintance with that matter began several years ago, when I was called upon to make a study of that art, particularly with reference to the Arrott patent, which at that time was involved in litigation which raised the question of the novelty of Arrott's device in comparison with the prior art, and the question of the validity and scope of the claims of the patent. In connection with my investigation of the subject I visited the plant of the Standard Sanitary Manufacturing Co., at Allegheny City, and observed the operation of the Arrott Dredger and also of the old hand methods of dredging which were superseded by the Arrott device. I made a series of experiments with the Arrott machine and also with the old hand methods, operating the old hand dredges myself and also the Arrott dredger As a result of my investigations, I gave testimony in the suit in which the Arrott patent was involved, expressing my opinion of the novelty and utility of the Arrott dredger. 2 3

In connection with my present testimony, I again visited the works of the Standard Sanitary Mfg. Co. and again observed the operation of the Arrott dredger and also of the old hand method.

Q. Please refer to Arrott patent No. 633,941 and state what you understand to be the invention described and claimed there?

> Mr. GROSVENOR: I object to that question. The patent specifications and the patent which is in evidence now speaks for itself, and the inventor therein states what his claim is. Any questions put to this witness is incompetent as to what the claim is. 4

A. The Arrott patent, which is No. 633,941, dated September 26, 1899, and which is known as "Petitioner's Exhibit No. 134," is entitled "Dredger For Pulverulent Material," and the patentee states that the invention "has relation to articles used for sifting and distributing powdered enamel-

ing material on the surface of bath-tubs and other vessels, commonly known to the trade as 'dredges.'" The patentee then describes the ordinary dredge as it was known prior to his invention—

Mr. GROSVENOR: I object to all this answer, particularly to the part that summarizes the description of the patent, and furthermore as it appears in the record that there were various hand dredges in use prior to this Arrott patent.

A. (Continuing): "The ordinary dredge consists simply of a sieve or other screen of proper mesh, having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not readily pass through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredge with the hand or with some instrument held in the hand, by tapping or striking the dredge, or by striking the dredge against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow, and requires considerable skill in manipulating the dredge so as to insure an even delivery of the enameling material."

Thus the patent acknowledges in itself the character of the prior device and its mode of use, and in contrast thereto the patentee proceeds to outline his new apparatus, and he says: "The object of this invention is to provide an automatic tapper or agitator, which will deliver a succession of rapid blows against the side or end of the dredge, and while relieving the workman of a great deal of labor, causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate within the latter and strike the end or side of the dredge with every forward stroke."

In illustration of the invention thus outlined, the patentee shows in his drawing a sieve or sifter consisting of a cylindrical frame, the bottom of which is covered by a wire cloth screen. This sieve is provided with a handle of some length, one end of which is attached to the sieve proper and the other is connected by means of a metallic sleeve with the cylindrical body of a pneumatic hammer. This handle is hollow

and contains a rod which bears at one end against the frame 1
of the sieve, and at the other end enters the pneumatic hammer in a position to receive the blows of the plunger of the hammer, as the plunger reciprocates under the influence of the air-pressure.

> Mr. CROSVENOR: Counsel for the Government repeats his objection to this testimony as stated above. The drawings referred to by the witness are, of course, part of the patent specifications known as Government's Exhibit No. 134, and the description of the drawings and the method of operation of the several parts thereof is stated in the specifications, that is, in Petitioner's Exhibit No. 134. 2

THE WITNESS (continuing): The pneumatic hammer is supplied with air by a flexible pipe leading to a compressed air reservoir, and a suitable valve marked E in the patent drawing is provided within easy reach of the workmen to control the admission of air and regulate the force of the blow.

The patentee then describes the advantages in a general way to be derived from the use of his invention, and he says: "By the use of this device the operator is enabled to distribute and deposit the enamel more quickly and evenly, and has 3
the use of both hands to carry and manipulate the dredger, relieving him of a great deal of hard work and enabling him to turn out more work in a given time than is possible by the use of the present style of dredge. * * * In the operation of the application of enamel in the powdered form, the dredge or sifter has always been carried by the operator in one hand, while the necessary jar to produce sifting was communicated either to the handle of the sifter or to the sifter itself by some instrument in the other hand or in some instances the sifter is held in both hands by one operator while an assistant produces the necessary jar to cause sift- 4
ing, and it is to this class of apparatus and operations that my invention relates and applies."

The patentee then says, in effect, that there is nothing new in the pneumatic hammer itself which he uses; and then he summarizes this invention in the claims of the patent, which are supposed to define the scope of the patent and to determine the substantial organization which is to form the exclusive property of the inventor. Since these claims are

of importance in considering the patent, they may be here quoted:

"Having thus described my invention, what I claim as new is—

"1. A dredger or sifter consisting of a screen or sieve and a supporting handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve, substantially as described.

"2. A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described.

"3. A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto, with means for controlling the operation of said agitator, substantially as described."

I might call attention to the fact that claim one describes the agitator as "a pneumatic agitator," and consequently that claim would not be infringed by an agitator which was not of the pneumatic type. In claims two and three, however, there is no such limitation as to the kind of agitator to be used, except that it is to be "an automatic agitator." These claims two and three would, therefore, cover an agitator such as was not of the pneumatic kind, for instance an electric agitator.

Mr. GROSVENOR: I object to all this testimony for the reasons above stated. I object particularly to the last answer as being an opinion of law, and of course, therefore, incompetent.

THE WITNESS (continuing): I also call attention to the fact that claim three includes as one element of the organization "means for controlling the operation of said agitator," which is, therefore, a limitation in claim three which is not found in claims one and two.

BY Mr. CHRISTY:

Q. While Mr. Grosvenor has properly suggested that the validity of this Arrott patent is not here involved, simply in order to throw light on its scope and meaning, I wish you would compare the operation of the Arrott dredger with the operation of dredging enamel by the old

hand method, not for the purpose at this time of pointing out any advantages in the one over the other, but to distinguish their methods of operation. 1

Mr. GROSVENOR: I suggest that counsel make his question more specific. There have been a number of hand methods and dredges desribed in the record, and it seems to me a general reference to all of them as one type is not sufficiently clear.

Mr. CHRISTY: I do not altogether see the distinction, but for the purposes of this question, you may consider it as directed to the two hand dredges in evidence here, known as the short-handle dredge and the long-handle dredge. 2

Mr. GROSVENOR: I now make my objection to any testimony as to the effect of the dredges, hand and automatic, by this witness. He has not proven himself as an expert in the making of enameled ware; his expertness goes to the determining of patents and whether certain inventions are novel and patentable, but he has not shown yet any qualification respecting the manufacture of enameled ware and the processes involved. A visit to the Allegheny factory certainly does not qualify him to testify as an expert. 3

Mr. CHRISTY: The question does not ask for effect or results, but it asks for *modus operandi.*

A. The old hand dredges referred to consisted merely of a sieve with a handle projecting therefrom, this handle being in some cases longer and in other cases shorter. In operation, the powdered enamel, which is something like flour in form, but much heavier and more compact when in a mass, was placed in the sieve, and the operator then lifted the sieve by the handle, using his left hand and passing the projecting end of the handle back under his elbow— 4

Mr. GROSVENOR (interrupting): I object to all of this testimony and these descriptions. This witness has not shown any knowledge of or experience with the method used. The record shows that the hand method was abandoned at the time that he went to the Allegheny factory, and any single instance when he may have observed it there used for the purposes of an experiment does not qualify him as an expert.

1 He has no special knowledge of or qualification in this matter.

Mr. CHRISTY: While not intending to be offensive, Mr. Christy suggests that the substance of this objection has already been made several times with all rights reserved, and respectfully declines to enter into any argument on the merits of the objection at this time. He submits that the witness should not be continually interrupted by repeated objections of this kind.

Mr. GROSVENOR: I state the objection as an objec-
2 tion, not as an argument. An objection can never be general, but must always be specific.

THE WITNESS (continuing): In his right hand the operator has what is known as a beater, consisting of a fork or loop of heavy wire with a short wooden handle, so that the operator's hand comes up close to the loop or fork of the beater. The loop or fork of the beater embraces the handle of the dredge, and by working the beater up and down with his hand, the operator can deliver blows to the handle of the dredge alternately on its upper and under
3 sides. Assuming that the article to be enameled is a bath tub, it is brought out from the furnace in a red hot condition, and the operator is obliged to work in the immediate neighborhood of this extremely hot mass of iron. He is, therefore, compelled to use an asbestos mitten on the hand which he uses for beating, also an asbestos apron and a shield over his face. When the tub to be enameled is in position, the operator approaches it, and holding the sieve over the tub proceeds to beat on the handle of the sieve with his beater, and thereby causes a puff of enamel to fall from the bottom of the dredge at each blow of
4 the beater. In this way he passes the sieve over the different portions of the tub, constantly working the beater with his hand, and thereby covers the tub with a layer of enamel of as uniform thickness as possible. The enamel is white, and wherever it falls upon the red hot bathtub the color of the tub is changed to white by the falling of the enamel thereon, so that the operation of coating the tub with enamel can be easily observed.

Mr. GROSVENOR: With permission of counsel for the defendants, I wish to make an interruption.

What factory is he discussing now, the Allegheny factory? 1

Mr. CHRISTY: Just go ahead and answer that.

THE WITNESS (continuing): I was speaking of the Allegheny factory.

As regards the Arrott dredger, it will be remembered that the dredger is automatic, and my investigation of it led me to believe that the action of the sieve itself was quite materially different in the case of the automatic dredger from what it was in the hand dredge. For example, I placed the handle of an automatic dredger in a vise and held it therein so securely that there could 2 be no possible bodily movement of the handle of the sifter. When the device was thus gripped in the vise, I found that it would operate exactly as well as when the handle was free, that is, no enamel whatever would fall through the meshes of the sieve so long as the pneumatic agitator was not in action, but the moment the valve of the pneumatic agitator was opened, the enamel would begin to flow from the sieve, indicating that the dredger was—so to speak—made alive within itself. When the pneumatic agitator was thus operated without any enamel in the sieve, 3 there was a distinct vibration of the meshes of the sieve, which could be detected by the tips of the fingers. This indicated to me a molecular transmission of the blows of the agitator through the handle, thereby setting the wires of the mesh into a continuous vibration. This vibration of the wires acted, I believe, to undermine and dislodge the minute particles of enamel lying upon the sieve and causing them to flow in a steady stream through the meshes of the sieve, this action being uniform throughout the entire mesh of the sieve.

On the contrary, I believe with the hand dredge there 4 is simply a series of intermittent blows which dislodge the enamel and cause it to flow through in puffs, by reason of the impact of the beater against the body of the sieve itself. The practical difference is that with the automatic device there is a continuous and uniform fall of the powdered enamel from the dredge, in distinction from the intermittent and non-uniform delivery of enamel by the hand dredge. In operation the workman uses both hands to operate the dredger, and moreover is not obliged to hold

1 one hand in a strained and fixed position against his side to support the weight of the machine. Having both hands to manipulate the dredger, and having both arms free, he moves the dredger over the bath tub, or other article to be enameled, without constraint, while the flow of enamel from the dredger is uniform and continuous, and independent of any action by the operator, except as he may start and stop the pneumatic agitator by the pressure of his thumb. Those are the chief differences in structure and in mode of operation the two devices under comparison.

By Mr. CHRISTY:

2 In paragraph 4 of the petition herein, reference is made to three patents, which are characterized as "competing patents," these being the Arrott patent, to which you have referred, a patent to Dithridge No. 949,625, and a patent to Lindsay No. 939,918; have you also read these Dithridge and Lindsay patents, and do you also understand the devices therein shown and described? A. Yes, sir.

Q. Please refer to the Dithridge patent and state whether, if one should use the device therein shown and described, he would or would not, in your opinion, also be practicing the
3 invention described and claimed in the Arrott patent as you state it and understand it?

Mr. GROSVENOR: I object to this question for the reasons stated above, that the question addressed to this witness calls for an opinion, and for other reasons above stated.

A. The Dithridge patent is dated February 15, 1910, and therefore relates to an invention subsequent to that of Mr. Arrott. The device of the Dithridge patent is simply a modification of the Arrott dredger, and preserves all of the
4 essential characteristics and qualities of the Arrott dredger, the only difference being in the mode of connection between the pneumatic hammer and the sieve proper. It is the purpose of Dithridge to have the pneumatic hammer portion readily detachable from the sieve portion, and to that end he provides a socket on the rear end of the handle of the dredger, into which fits a projection or nozzle on the end of the pneumatic hammer, and when the nozzle is thus engaged in the socket, he prevents them from separating by having the—

By Mr. Grosvenor: 1

Q. Are these notes, which you are using here, in your testimony?

A. I have not used them before. These are a memorandum of this Dithridge patent. You can see what they are. I was not quoting from them, either. What was the last thing I said?

Stenographer then read the last answer of the witness.

A. (Continuing): He prevents them from separating by having both the socket and projection gripped by the hand of the operator.

2

Mr. Grosvenor: I object to the use of these notes here. It does not seem to me that the witness should use notes from which to testify. There certainly should be some foundation laid for the use of the notes.

Mr. Christy: If you have any further explanation of these notes, Mr. Bentley, you can give it; and if Mr. Grosvenor still objects, I suppose there is no reason why you should use them.

The Witness: Before coming into the examination room I had written down on two small sheets of paper a brief outline of the essential likeness between the device of Arrott and that of Dithridge. This was merely to save time by having the matter of the similarity formulated on paper; I have no objection to going on without the notes, although it may take a little more time, and cause my statement to be more diffuse. 3

When the two parts, to wit, the pneumatic hammer and the dredger, the nozzle of the hammer entering the handle of the dredger, are thus united and held together by the hand of the operator, they are secured to each other as effectively for practical purposes as they are in the construction of Arrott. Both in the Arrott device and in the Dithridge device the essential elements of the organization are the screen or sieve, the supporting handle, and the pneumatic or automatic agitator attached to the dredger and adapted to vibrate the sieve. These are the essential elements which make up the Arrott organization, and they are likewise the essential elements which make up the Dithridge organization. It is true that in the Dithridge arrangement it is easier to take the machine apart by re- 4

1 moving the hammer portion from the sifter portion, but so long as the Ditheridge device is in operation, assuming it to be a practically operative device, it must necessarily contain the same features and the same elements as are found in the organization of Arrott. It is, therefore, my opinion that there is no substantial difference between the two devices, and that the later device of Dithridge would be subordinate to the earlier device of Arrott, and embraced by the Arrott patent.

By Mr. Christy:

2 Q. Will you please now take up the Lindsay patent in the same way, and state whether or not, in your opinion, if anyone would use the device therein described, he would also use the Arrott patent as you have stated it and understand it?

Mr. Grosvenor: I make the same objection to this question as to the last question addressed to the witness.

A. The Lindsay patent is dated November 9, 1909, and is therefore subsequent to the Arrott invention and the Arrott patent. The Lindsay device is also an automatic
3 dredger containing a screen or sieve and a handle and an automatic agitator secured to and carried by the dredger, and adapted to agitate or vibrate the same. The automatic agitator of Lindsay is an electro-magnet, operated by an alternating or broken electric current, and therefore having a vibrating armature, which is so connected with the wire mesh of the sifter as to impart its vibrations thereto and so produce the same effect, in substance, that results from the pneumatic agitator of Arrott. In my opinion this does not create any substantial difference between the device of Lindsay and that of Arrott, the electric vibrator of Lindsay
4 being an equivalent for the pneumatic agitator of Arrott, and both of them falling within the class of automatic agitators such as Arrott refers to in his patent claim. To my mind no one could employ the Lindsay dredger without also employing the substance of the Arrott invention.

Examination Suspended.

At this point the taking of evidence was adjourned until the following morning, March 29, at 10 o'clock, at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1
FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2

March 29, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 29th day of March, 1911, at 10 o'clock A. M., and evidence taken on behalf of the defendants, as follows:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
MARSHALL A. CHRISTY, Esq., 3
on behalf of the Standard Sanitary Mfg. Co., *et al.*

EDWARD M. BENTLEY, a witness heretofore produced and sworn on behalf of the defendants, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY (continued):

Q. In your last answer given yesterday, you stated generally your reason for considering the automatic agitator of the Lindsay patent an equivalent for the automatic agi- 4
tator of the Arrott patent. Will you please explain this equivalency a little more fully?

A. There are two factors in that question, the first being the fact that the use of an electrical vibrator—

MR. GROSVENOR: Of course, the objection that I made yesterday applies here.

A. (Continuing): —in place of a pneumatic vibrator

1 involves merely a substitution of one well-known kind of motive power for another to produce the to and fro action of the vibrating element.

The second factor is that the electric vibrator of Lindsay is intended to do exactly what is done by the pneumatic vibrator of Arrott, to wit, to produce a local vibratory excitation of the wires which form the sifting mesh on the bottom of the dredger. I have heretofore pointed out that the Arrott dredger did not depend upon shocks or jars transmitted to the body of the enamel contained in the dredger. On the contrary, the enamel in the dredger re-
2 mains in a quiescent condition and the Arrott dredger operates because the local vibration of the wires of the sifter act to gradually undermine the quiescent mass of enamel resting upon the mesh of the sifter, and thereby work the fine particles of enamel down through the apertures between the wires. In the Lindsay apparatus especial attention is directed toward the securing of such peculiar local action of the wires of the sifting mesh. That is to say, Lindsay applies his electric vibrator to a spider of metallic rods which engages directly the wire mesh of the sifter. The action of the electric vibrator is, therefore,
3 entirely local to the wire mesh, and it is Lindsay's particular purpose to have it so, and to avoid any vibration of other portions of the dredger. In view, therefore, of the fact that both devices are intented to produce the same peculiar action of the wire mesh of the dredger, and that the substitution of an electric vibrator for a pneumatic vibrator is merely the use of one sort of motive power instead of another, my conclusion is that Lindsay is simply using the Arrott dredger with alterations which do not affect the essential character of the apparatus.

Q. In testifying yesterday you referred to some demon-
4 strations which you made with the Arrott dredger, in placing it in a vise and operating it. I wish, if you can, that you would produce some photographs which accurately show these demonstrations as performed by you, and if you can also do so, I wish you would produce additional photographs showing hand dredging and pneumatic dredging as you witnessed it on the occasion to which you have referred.

A. The experiment of operating the Arrott dredger while it was clamped in the vise was performed in two

ways. In the first place, the extreme rear end of the dredger handle, formed by the pneumatic hammer, applied thereto was clamped securely in the vise— 1

Mr. GROSVENOR: I do not see the materiality of this question.

A. (Continuing): —and while the handle was thus clamped, the pneumatic vibrator was started in action and the—

Mr. GROSVENOR (interrupting): I make my objection to all this evidence as immaterial, incompetent and irrelevant, having no bearing on any of the issues in this case. 2

A. (Continuing): I was saying that when the dredger was thus clamped in the vise and the sieve portion thereof supplied with enamel, the pneumatic agitator was set into operation. The photograph which I here produce shows this condition (indicating). It will be observed that the photograph shows a steady and continuous flow of enamel from the dredger.

Thinking that this might still involve some bodily vibration of the sifter due to the resiliency of the handle between the vise and the sieve, I repeated the experiment but applied the vise close to the sieve, as appears in this second photograph which I here produce. This second arrangement made no perceptible change in the operation of the apparatus. 3

As regards my experiments comparing the operation of the automatic dredger of Arrott with the prior hand dredge—

Mr. GROSVENOR: I object to that term of description "prior hand dredge," the photograph showing the short handle dredge which, as testified to by witness, was abandoned five or six years before the adoption of the Arrott dredger. 4

A. (Continuing): I have here two photographs showing respectively the prior hand dredge in operation and—

Mr. GROSVENOR: Note the same objection.

A. (Continuing): —and also the automatic dredger. Turning to the first photograph of the hand dredge, it

1 will be observed that the operator is grasping the handle of the dredge with his left hand, the end of the handle projecting back under his elbow, and his arm being held rigidly against his side in a strained position. With his right hand he grasps the beater, which is in the form of a wire loop surrounding the handle of the dredge, and which the man works up and down as rapidly as possible, thereby applying the blows to the top and bottom sides of the handle alternately. The sieve of the dredge is held over the bathtub, shown in the photograph as mounted on a tilted table, having just been drawn from the furnace, the door of
2 which is shown in the background.

Turning to the second photograph, which shows the operation of the automatic dredger, it will be observed that the apparatus is held by the operator in both hands, and that both of his arms are free to swing the sifter from side to side to guide it over the successive portions of the tub. With his left hand, the operator grasps the handle of the dredger about midway of its length, and with his right hand he grasps the rear end near the pneumatic agitator, with his thumb on the throttle valve of the agitator, so that he can start and stop the flow of the enamel at will.

3 I call particular attention to the difference which appears in the photograph between the flow of enamel from the hand dredge and the flow from the automatic dredger, the difference being quite apparent even in the photograph. These two photographs represent the comparative operations of the two devices as I observed them in the course of my investigation of the subject.

Mr. CHRISTY: Defendants' counsel offers in evidence the photographs produced by the witness, referred to in his last answer, they being respectively as follows: the photograph showing the handle of the
4 dredger clamped in a vise at its outer end is marked "Defendants' Exhibit No. 4"; the one showing the handle of the dredger clamped in a vise at its inner end is offered as "Defendants' Exhibit No. 5"; the photograph showing the hand dredge is offered as "Defendants' Exhibit No. 6"; and the one showing the pneumatic dredger is offered as "Defendants' Exhibit No. 7."

Photographs referred to were then marked and filed as Defendants' Exhibits Nos. 4, 5, 6, and 7. 1

Mr. GROSVENOR: The Government objects to all these photographs as incompetent, immaterial and irrelevant, and furthermore as incompetent for the purpose of comparison of the two methods, namely, the hand method and the air method, the picture of the hand dredge being of a hand dredge which the record shows was abolished long prior to the invention of the automatic dredger, this being shown by the testimony of George Shield, the enameling foreman of the Standard Sanitary Mfg. Co. at New Brighton. 2

Mr. CHRISTY: Defendants' counsel does not wish his silence heretofore in connection with statements of the same alleged facts as that last above to be construed as acquiescing in their accuracy. So far as the testimony of this witness is concerned, he was testifying as to observation at the Standard plant at Allegheny.

By Mr. CHRISTY:

Q. Basing your testimony on your familiarity with manufacturing operations in general, and particularly on your study and observation in this art, will you please state your opinion as to the status and practical standing of this Arrott invention in enameling operations. 3

Mr. GROSVENOR: Note the same objection as heretofore made, that is, that the witness has not shown proper qualifications as an expert and no knowledge of the business other than that obtained by the observation of certain experiments at the Allegheny factory with respect to which he has testified. Therefore, he has no special experience and knowledge qualifying him to give an opinion. Further, I object to the question as being too broad in the use of the term "enameling operations." 4

Mr. CHRISTY: I thought the question would be easily understood, but I have no objection to saying that, of course, it is directed to the operation of spreading powdered enamel on cast iron sanitary ware.

A. My experience in the study of manufacturing opera-

1 tions, which now covers a period of some thirty years, leads me to think that the proper method of estimating the effect of an invention like that of the Arrott dredger, upon the particular art to which it pertains, is to consider briefly some of the general principles which apply to all manufacturing operations, particularly as regards the results following from the introduction into the art of an invention that gives rise to a change in the methods of manufacture previously followed.

One general principle is that the magnitude of the results which follow the advent of some invention into an art
2 is independent of the complexity or mangitude of the invention *per se*. Some of the most important advances in an art are often produced by an invention which is in itself a matter of extreme simplicity. For example, I am at the present time engaged in a matter wherein the art of manufacturing pressed glass articles, such as tumblers and jars, has been practically revolutionized by the very simple expedient of allowing a continuous stream of molten glass to flow from an aperture in a furnace containing a large body or pool of such molten glass, and periodically cutting off sections of this flowing stream of glass at a point some
3 inches below the point at which it emerges from the furnace. Prior to this expedient, the only known method of detaching small batches of glass from a large mass in the furnace was to dip them out by means of a ladle or an iron rod known as a "punty." This process had to be performed by hand except at the expense of very costly and complicated machinery. By the simple expedient just mentioned, it became possible to automatically cut off the small batches of glass from the flowing stream by means of machinery, and deliver them automatically to molds where the pressing takes place automatically, the completed ar-
4 ticles being automatically delivered from the machine and automatically transferred to the annealing furnace. This is one example of a case where an expedient, very simple in itself, has been the means of producing a revolutionary advance in an art.

Still another one of the many examples such as this that have come under my observation is in the electrical art, wherein one of the most useful inventions ever made resided merely in the placing of an electro-magnet adjacent to the terminals of an electric switch, whereby any electric

are produced at the terminals when the switch is opened, that would otherwise fuse and burn the terminals, is instantly extinguished by the action of the magnet. This very simple device opened the way for the handling of large electric currents by means of switches, and is employed in a large portion of the electrical apparatus now in use. It is present, for instance, in every electric railway car in the world, it being necessary to control the speed and power of such a car by means of a switch that is dependent upon the presence of such a magnet to exstinguish the arcs at the switch contacts. 1

I might give many illustrations within my personal knowledge of large and important results in an art, which have been due to some expedient, which, in itself, was extremely simple. 2

The second general principle to which I would refer is that the elimination of hand work and the substitution therefor of mechanical operation is always productive of an advance in a manufacturing art. The hand work in general is slow, irregular and expensive, and oftentimes involves arduous physical labor. One example of this is in the art of manufacturing pressed glass articles to which I have referred. To provide the separate detached batches of glass by hand was slow, irregular and expensive. One operation which I have particularly in mind previously required the continuous labor of four men, but is now performed much more expeditiously and uniformly by a machine, which requires only the occasional attention of one man. 3

A third principle to which I might refer is that the advent of an invention which creates a marked improvement in a manufacturing art, establishes a new standard to which the art generally must conform. Indeed, I would say that a large part of my work originates in the efforts of the art to keep pace with some new standard of speed, cheapness or quality which has resulted from the introduction of some invention that has produced an improved mode of production. This does not mean that the old methods are inoperative, or that articles cannot still be produced by such old methods, but it means that the art has advanced to a new standard or has set a new pace which the old methods are unable to keep up with. 4

Now, applying these general principles to the matter in hand, it is clear to me that while the Arrott dredger is,

in itself, a small article, and the application thereto of a pneumatic agitator to supplant the manual agitation or jarring is not in itself a complicated expedient, yet it is one capable of producing large results in the art as a whole. And while I am not in a position to state the improvement which it has produced in terms of dollars and cents, my experience assures me that it must necessarily have produced results of an important and extended character.

In the second place, it is obvious that the Arrott dredger involves the substitution of mechanical for manual operation in one important step in the process of manufacturing bath tubs and other enameled ware. It was obvious to me that the manual operation involved arduous physical exertion on the part of the operator. One arm was in a cramped and strained position, and the guiding of the dredge over the surface of the bath tub involved largely a movement of the body in contrast to the free and unrestrained movement of the arms only. The application of the enamel was slow, and when it is remembered that the bath tub, after being withdrawn from the furnace, is rapidly losing its heat, and will in a short time become so cold that the enamel will not adhere to it, it is evident that a more rapid application of the enamel, so that as much as possible will be applied to the tub before it becomes chilled, is a matter of importance. In the case of the manual dredging, the outflow of the enamel is not continuous, but is in a series of puffs, it being impossible for the operator to work his beater fast enough to produce a steady flow, while, moreover, the rapidity decreases as the operator becomes wearied, and the intermittent flow becomes more pronounced. Since the operator is at the same time moving the dredge over the bath tub, the deposit of enamel tends to become irregular, being thicker at the instant when a puff or jet of enamel falls from the dredge, and thinner at the periods between the succeeding puffs. This operation must also be performed in an oppressively heated atmosphere, which renders the labor more exhausting, particularly in the summer time. It was, therefore, evident to me that the elimination of this hand labor and the substitution therefor of mechanical labor was a matter that would inherently and of necessity result in a marked improvement in the art. Indeed, from my knowledge of such matters I expect that

some invention will be made that will eliminate hand labor entirely in the enameling of bath tubs and small ware. Knowing the advantages which would result from such an invention, and knowing the eagerness with which manufacturers are inspired by the patent system to produce such inventions, I am confident that the time is not distant when hand labor will be entirely eliminated from this particular art. 1

In the third place, it is my observation that the Arrott invention has created a new standard in this particular art, and as in all arts, the creation of such a new standard renders the prior methods obsolete, although they still remain practical. For example, it is still possible to propel street cars by horses, and it is still done in some cases, yet the introduction of the electric motor as a propelling agency for street cars has created a new standard that has rendered horse propulsion obsolete. 2

So, it is still possible to enamel bath tubs by the old hand process, although it would not conform to the more modern standards resulting from the mechanical in distinction from the manual dredge.

One of the ways in which an invention frequently acts is to largely increase the output of a given plant calling for a given investment. If a manufacturer with the same investment in his plant can double the output of that plant, it is obvious that a marked advantage is gained. In the case of the enameling of bath tubs, it would appear to me that the use of the Arrott dredger would enable the manufacturer to produce from the same set of furnaces a materially greater output of enameled bath tubs. I also believe that the quality of the output is greatly improved at the same time, there being thus a gain in quantity as well as quality secured from the same set of furnaces. This also illustrates one of the ways in which the effects of an invention, simple in itself, are ramified throughout the entire establishment, some of the secondary effects being even more important than the immediate effect which the invention has. 3 4

I am, therefore, convinced that the Arrott dredger not only provided a distinct relief to the operators engaged in the old manual method, but also resulted in the production of better and cheaper enameled articles, and marked a distinct step in advance in this particular art.

Mr. CHRISTY: That will be all.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bentley, will you state your entire experience in visiting factories manufacturing sanitary enameled iron ware?

A. As I remember it, I made one visit to the factory of the Standard Sanitary Manufacturing Company in Allegheny City, and spent a day there, at the time of the suit which involved the Arrott patent. I made a second visit some weeks ago and spent about half a day observing again the machine and its operation. That is all.

Q. Have you been in any other factories? A. No.

2 Q. Have you visited any of the other plants of any of the other manufacturers? A. None.

Q. This first visit that you made to the Allegheny plant was several years ago, at the time of the suit respecting the Arrott patent, is that right? A. Yes.

Q. And was for the purpose of enabling you to testify intelligently about the patent and the dredges in that case?

A. Yes.

Q. This second visit several weeks ago was in order to enable you to testify in this suit?

A. Yes, to the extent that it might refresh my ac-

3 quaintance with the matter.

Q. Have you given any study to this subject of the making of sanitary enameled iron ware except in so far as these two visits enabled you to study the use of the Arrott dredger and the hand dredge?

A. A considerable amount of studying was incidental to those visits in the way of looking over the prior art as it was shown by patents and by the testimony in this suit, while I also examined at great length the operators and others familiar with the processes.

Q. You mean by the operators those who were enamel-

4 ing tubs and other ware on the occasion of your two visits?

A. Yes.

Q. Your study, then, of this subject has been confined to the subject of dredgers, has it not? You have not studied the making of the powder, have you, or the making of the slush coat, or the making of the patterns or the moulds?

A. Not particularly. I went through the portion of the factory devoted to the manufacture of the enamel and the

application of the preliminary coats, and also to the foundry wherein there was nothing of particular novelty. 1

Q. This was done on the occasion of both these visits?

A. That was done at the first visit, not at the second.

Q. Am I to understand you as saying that there was no particular novelty, to apply that to the making of the enameling powder?

A. No, I was referring merely to the foundry.

Q. Do you know whether or not, as a matter of fact, the making of the enameling powder is one of the secrets of the business?

A. I understand that there may be some small secrets about it. 2

Q. What do you mean by "small secrets," not important secrets?

A. I mean that the general process of producing the enamel is old and well known, but that individual manufacturers may have some special steps or operations which are kept secret.

Q. What do you mean by "steps or operations?"—the ingredients of the powder?

A. It may be in the ingredients, and most likely is, although there may be some peculiar methods of mixing or heating or other feature. 3

Q. You said that the general process of producing the enamel is old and well known; what do you mean by that?

A. I understand that the general method of producing powdered enamel was old and well known. At the time of my visit there were no secrets maintained as to the general steps of the process, such as the melting of the ingredients, the cooling of the molten material into slag and the grinding of it into powdered form.

Q. You are speaking of the method of operation; were you given the formula for making the powder? A. No. 4

Q. Was anyone there with you who asked for the formula? A. No.

Q. Can you say, then, that was not maintained a secret at that time?

A. No, the formula, so far as I know, may have been maintained secret.

Q. How about the slush coat; do you know whether the formula for making the slush is one of the secrets of the business? A. I do not.

1 Q. Do you understand that the making of the slush is one of the important factors of the business? A. Yes.

Q. How was the slush put on, do you know or do you recall? A. My recollection is it was painted on with a brush.

Q. With a brush? A. Yes, with a brush.

Q. Did you make any analysis of the pig iron which goes into the making of the cast iron? A. No.

Q. You did not make any study of that subject?

A. No.

Q. In fact, the purpose of your visit was simply to ob-
2 serve the operation of the Arrott dredger as compared with the operation of the hand dredges, which was shown to you at that time?

A. Yes, and to acquire such other information as I could from the employees and officers of the company.

Q. Referring to this picture of the old hand dredge, which was introduced in your direct examination, is that a picture of the hand dredge which was operated that day? A. It was.

Q. Had you ever seen the hand dredge before that time?

A. I think I had, although I am not now certain about it.

3 Q. Did you know that, as a matter of fact, that was not the latest form of hand dredge in use prior to the invention of the Arrott patent?

A. No, I understood that it was the last that had been used by the Standard Company, and in fact it was one of the actual dredges which they had happened to keep.

Q. Have you read any of the testimony in this case?

A. No.

Q. Have you read the testimony of George Shield?

A. I have not.

Mr. GROSVENOR: He was a witness for the defend-
4 ants; enameling foreman for the Standard at New Brighton.

Examination Suspended.

At this point a recess was taken for one hour and a half.

After Recess.

EDWARD M. BENTLEY, resumed the stand for continuation of cross examination, and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. George Shield produced this long handle dredge which is known as "Petitioner's Exhibit No. 279" and testified that this dredge was in use at the New Brighton factory until the year 1901. Did you make any experiments with this form of dredge in 1907 on the occasion of your first visit to the Standard Sanitary Manufacturing Company's plant?

A. No, I assumed that its operation was substantially the same as the dredges with shorter handles used at the Standard works.

Q. Did you see this form of dredge at the Standard works in 1907?

A. I do not now remember, although I was acquainted with it at that time.

Q. In 1907?

A. In 1907.

Q. Now, this visit a few weeks ago, was for the purpose of seeing a bath tub enameled with this long handle dredge, is that right?

A. Yes, it was used there at that time.

Q. Was any other hand dredge used on your visit a few weeks ago other than this long handle dredge?

A. I think not as I remember it.

Q. Now, on the prior occasion the only one used was the short handle dredge, is that right? A. Yes.

Q. I show you this exhibit, being the picture of the short handle hand dredge, which is marked "Defendants' Exhibit No. 6." You pointed out certain protections which the workmen used in using that dredge; do you know whether or not, as a matter of fact, those protections were discarded by the workmen who used the long handle dredge?

A. I think it appeared in the suit on the patent that some, at least, of the protective clothing was not necessary when the long handle dredge was used; but that is my only knowledge of the matter.

Q. Now, how many bath tubs were enameled with the long handle dredge when you were there a few weeks ago?

A. I do not now recall that there was more than one.

1 Q. Your answer is one then, is it?

A. I am not positive about it, although I distinctly recollect one.

Q. You do not recollect more than one? A. No.

Q. On your prior visits in 1907, how many bath tubs were enameled with the short handle hand dredge?

A. I do not remember.

Q. Was it more than one?

A. I have no recollection on the subject, as it was some ten years ago.

Q. It was how many years ago?

2 A. Nearly ten years ago.

Q. I thought you testified that your visit to the Standard plant was in 1907?

A. Yes, I should have said about five years ago instead of ten.

Q. As I recall your testimony this morning, you have not seen tubs made anywhere else except on these two occasions, is that right? A. That is right.

Q. Returning now to the Arrott patent, is that a patent on a machine? A. Yes.

Q. The dredger made according to the specifications of

3 the Arrott patent is, then, the patented article?

A. Yes, considering the machine as an article. Technically there is a distinction between a machine and an article of manufacture in patent practice.

Q. What is a patented process?

A. A patented process is a series of acts performed on some material, speaking generally.

Q. The Arrott patent is not a patented process, is it?

A. No.

Q. It is a patented machine? A. Yes.

Q. Or a patented tool?

4 A. That might be said of it, although the technical term is a "machine."

Q. Referring to these other two patents, is the Dithridge patent a patent on a machine? A. Yes.

Q. There is no patented process there, is there? A. No.

Q. Is the Lindsay patent a patent on a machine?

A. Yes.

Q. Is there any patented process covered by that patent?

A. No.

Q. Now, I read to you from the Petitioner's Exhibit No.

9, being a copy of the license agreement executed between 1
Edwin L. Wayman and the various corporation defendants.
"Paragraph one: the licensor hereby grants to the licensee,
"subject to the provisions hereinafter contained, a non-ex-
"clusive license to practice in the manufacture of sanitary
"enameled iron ware the processes patented in said several
"patents, to make and use in such manufacture, machines
"and devices patented in said patents, and to use and sell
"goods so made." As I understand your testimony, none of
the three patents to which I have referred includes a patented
process? A. No, technically speaking.

Q. Have you ever examined the sanitary enameled iron 2
ware manufactured by other manufacturers?

A. No, not particularly.

Q. I mean, other than the Standard Sanitary; have you
at all?

A. No, except that I might have seen it incidentally.

Q. In this suit respecting the Arrott patent, in which you
testified as a witness three or four years ago, the point at
issue was whether the Arrott patent covered something which
was patentable, is not that right? That was one of the main
issues?

A. Yes, if you refer to the question of the patentable 3
novelty of the Arrot device in view of the prior art.

Q. Your testimony was largely in order to establish that
it was something, or that it was an idea or object which was
patentable?

A. Yes, that was the primary purpose of my testimony.

Q. You testified on direct examination that in your judg-
ment the Dithridge and Lindsay patents infringed the Ar-
rott patent? A. Yes, that was the substance of it.

Q. There has been no judicial decision to that effect?

A. Not to my knowledge.

Q. Does not the fact that the patent office in Washington 4
allowed patents to Dithridge and Lindsay indicate that in
the opinion of the Patent Office the two patents did not in-
fringe the Arrott patent?

A. No, the Patent Office never considers questions of in-
fringement in granting a patent; they merely consider the
question of its individuality, and it may infringe one or more
outstanding patents; but such infringement is not within
the province of the Patent Office to consider.

1 Q. If the idea or invention has already been patented, will they issue another patent?

A. Yes, provided the claims of the second patent are not coextensive with the claims of the patent already issued. For example, when I was in the Patent Office we issued a great many patents on telephones; all of which were subject to the outstanding broad patent of Bell, and infringements thereof.

Q. Did you know they were infringements at the time they were granted? A. Yes.

Q. You have not made a study of the enameling powder
2 which must be used; I understood that was your testimony this morning? A. That was correct.

Q. Nor of the ingredients of the slush coat? A. No.

Q. Nor of the temperature to which the cast iron tub must be brought after the slush coat is applied?

A. Not particularly.

Q. Of course, except by your observation at the time of those two visits?

A. I only observed that the bath tubs were at a red heat, indicating a temperature of perhaps 1200 degrees.

Q. Did you observe whether, in the case of the applica-
3 tion of the slush coat and the firing thereafter, as between the case where the enameling powder is applied and the tub is then fired, in which case the tub is brought to a higher degree of temperature, you have not made a study of those subjects, have you? A. No, I have not.

Q. Now, are you able to state, then, as compared with those steps in the manufacture of the enameled article, just how important the use of the Arrott dredger is?

A. No, if you refer to the matter of the primary slush coat and the temperature required to bake it on to the tub.

Q. In your testimony this morning, in response to the
4 final question by Mr. Christy you testified at length. After referring to three general principles, you state: "Now, applying these general principles to the matter in hand, it is clear to me that while the Arrot dredger is, in itself, a small article, and the application thereto of a pneumatic agitator to supplant the manual agitation or jarring is not in itself a complicated expedient, yet it is one capable of producing large results in the art as a whole. And while I am not in a position to state the improvement which it has produced in terms of dollars and cents, my experience assures me that it

must necessarily have produced results of an important and extended character." Are you able to give any more definite opinion as to the value of this Arrott dredger? 1

A. Not from facts strictly within my knowledge. There are a great many facts of which I am cognizant, which were brought out in the suit on the patent, indicating a more specific and definite result in the business, produced by the Arrott dredger.

Q. Would you say the value of the patent mounted into the hundreds of thousands of dollars?

A. I would not undertake to estimate the value of the patent without more data than I now have.

Q. You state: "it is still possible to enamel bath tubs by the old hand process, although it would not conform to the more modern methods resulting from the mechanical in distinction from the manual dredger." I understand the meaning there to be that the Arrott dredger, while not a necessity, is an economical convenience in manufacture? 2

A. That depends somewhat upon the conditions. A machine may be—

Q. You are not referring to the Arrott dredger now.

A. Yes, I will make that clear. A machine like the Arrot dredger may be of such practical convenience that it becomes a necessity in an industry except as a theoretical matter. 3

Q. Well, now, is this Arrott dredger of such practical convenience that it is a necessity?

A. I think it is, from what I know of the situation.

Q. You have not, as you testified, been over the plants of any other manufacturers? A. No.

Q. You have not observed the methods of manufacture of any other manufacturer other than the Standard and the Mott, so far as it was involved in that other suit?

A. That is correct. 4

Q. You do not know whether other manufacturers, as a matter of fact, do or do not use mechanical dredgers?

A. I do not.

Q. Are you often a witness in patent suits, Mr. Bentley?

A. Yes.

Q. That is, being an expert witness in patent suits is one of the important parts of your business? A. Yes.

Q. And you expect to be paid for coming as an expert witness in this case? A. Yes.

1 Q. Which of the defendants have retained you as a witness in this suit?

A. The Standard Sanitary Manufacturing Company.

Mr. CHRISTY: Do you mean in this suit, Mr. Grosvenor, or in any other suit?

Mr. GROSVENOR: I mean in this suit.

THE WITNESS: Yes.

Q. When you said that this Arrott dredger is more accurately defined as a machine than as a tool, what did you mean by that?

2 A. There are only four classes of inventions which are patentable, to wit, an art or process, a machine, an article of manufacture and a composition of matter. The Arrott device would fall under the class of the "machine," there being no technical class of patentable articles known as "tools." A machine like the Arrot dredger might be popularly called a "tool," although in general that term relates to smaller and simpler articles, like hammers, chisels, etc.

Q. The dredger, then, is a tool in the sense that it is an instrument or device used in manufacturing something else? A. That could be said.

3 Q. Now, in this testimony yesterday, on page 356, you said among other things: "He is therefore compelled to use an asbestos mitten," etc.; you are referring there to the short handle dredge given in that picture known as Defendants' Exhibit No. 6? A. Yes.

Mr. GROSVENOR: That is all.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. I don't know Mr. Grosvenor's purpose in asking you by whom you were retained to testify in this case, but you did not intend to state further than your understanding,

4 did you?

A. No, as I remember it, the retainer was paid me by Mr. Christy, and I assumed that it was in effect from the Standard Sanitary Manufacturing Company, by whom I had been retained before.

Q. I believe you said or implied in your cross examination that at the time you made preparations for testifying in the former suit, you knew of this long handle dredge; how did you obtain that information?

A. It was referred to in the testimony of one of the wit- 1
nesses in that case, although I may have learned of it in conversation with others. I remember that I directed to have photographs made of the long handle dredge, corresponding to the photographs which I have here produced of the short handle dredge, and such photographs I saw at the time of the suit on the patent.

Q. I hand you two photographs and ask you whether these are photographs, or prints of them, among others which you had made at that time and to which you have just referred?

A. Yes, these are the photographs I referred to. 2

Mr. CHRISTY: Defendants' counsel offers in evidence the two photographs last identified as "Defendants' Exhibit No. 8" and "Defendants' Exhibit No. 9."

Photographs referred to were then marked and filed as Defendants' Exhibits Nos. 8 and 9, respectively.

Mr. GROSVENOR: I make the same objection to these photographs as I made heretofore.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bentley, you are not a chemist, are you? A. No.
Q. You are a mechanical and electrical expert? A. Yes. 3

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOHN C. REED, a witness of competent age, produced on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Please state your name, age, residence and occupation? 4

A. John C. Reed; I was sixty-four years of age on the 19th day of last February. I reside at 3706 Brighton Road, North Side, Pittsburgh. I am manager of the Standard works of the Standard Sanitary Manufacturing Company.

Q. How long have you been connected with the Standard Sanitary Manufacturing Co. and its predecessor, the Standard Manufacturing Company, and in what capacity?

A. I entered the employ of the Standard on the first day of January, 1893, and have been in the employ of the Stand-

1 ard Manufacturing Co., and the Standard Sanitary Manufacturing Company since the organization of that company, until the present time.

Q. What was your position when you first went with the Standard Manufacturing Company?

A. General superintendent of the works.

Q. Have you always been connected with that plant?

A. With the exception of about seventeen or eighteen months—no, about fifteen or sixteen months—between February, 1900, and June, 1901, when I was not directly attached to any of the plants of the company during that time. After
2 that time, or during June, 1901, I was appointed manager of the Standard works.

Q. During the time that you have been at the Standard works, you have, of course, become familiar with the methods of manufacture and machines used there, have you?

A. Yes.

Q. To save time, I will ask you when the Arrott dredger was adopted at that plant?

Mr. GROSVENOR: The Allegheny plant?

Mr. CHRISTY: Yes.

3 A. According to my best recollection, the experimenting connected with its development began either late in 1897 or during the fore part of '98, and its use was begun during '98.

Q. And about what time was the plant completely equipped?

A. Well, I could not state positively. I was not directly in charge. I was not the superintendent of the enameling department at that time; I know there was considerable objection on the part of the men to the use of it, growing out of the fear that it would reduce their wages or make them
4 increase the output, but I think it was some three or four months after it had been developed and made successful before it was permanently adopted.

Q. Who was in charge of the enameling room at that time?

A. Mr. James W. Arrott, Jr., was superintendent of the enameling department.

Q. Subordinate to you, was he?

A. Yes, generally speaking; under my title he was, yes.

Q. Did you personally observe the advantages, if any, of

the use of the Arrott dredger as compared with the hand methods of enameling formerly used there? A. I did. 1

Q. Will you name some of these advantages which you observed there?

A. Before the introduction of the Arrott dredger, the enameling of an article was a very different operation, speaking from the manual labor and the physical effort necessary standpoint, and from the exposure to the high temperature and the inability to save oneself from it in the operation in using the old style knocker and dredge.

Q. And did the adoption of the Arrott dredger materially help these conditions? 2

A. I consider that it did, very greatly.

Q. As respects the labor?

A. As respects the amount of labor necessary to perform the operation and the direct exposure to the temperature, it was a very great mitigation.

Q. How did it help as regards exposure to the temperature?

A. When the man used the old style dredge, it was necessary for him to use both hands, and he had a fork-shaped rapper or knocker, and he had to stand in closer to his work, and he could not dodge the temperature as a change 3 of position would aid him to do when he had command of the article with both of his hands, and he was enabled to stand slightly farther away; with that degree of temperature "slightly" means a great deal.

Q. As regards the quality of work done by the men, did the adoption of the Arrott dredger improve it?

A. Yes, sir, I consider it improved it very greatly, and it was the greatest advance in the art of depositing enamel on the ware that had been made up to that time in my experience.

Q. In what way did it improve the quality of the ware? 4

A. By giving the operator greater command of the process with greater ease.

Q. That is, enabled him to do the work more accurately, is that it?

A. More accurately and better, under better conditions.

Q. Was he enabled to enamel more tubs in a given time?

A. Yes, sir.

Q. And that increased your furnace output, did it?

A. That increased the furnace output.

1 Q. Prior to the adoption of the Arrott dredger, about how many tubs did the men enamel in a given time, that is, one furnace crew?

A. I would not consider myself a good authority, and can only state in general terms my recollection, as the direct supervision of the work was under Mr. J. W. Arrott, Jr. My recollection is that the output was approximately about twelve tubs per turn—ten to twelve tubs, I would say; that was prior to the introduction of the Arrott sifter or dredger.

Q. That was per turn of how many hours?

A. I am unable to state precisely the length of the turn,
2 for the reason that some time prior to the introduction of this improved dredger there were only two turns, and I don't know the exact length of them; but either prior to, or about the time, the eight hour turn was adopted, making three turns in the twenty-four hours, following each other continuously.

Q. As you do not recall those matters, I will not go any further with them. Did the adoption of the Arrott dredger make it easier for you to hire and break in the men?

A. My own observation of the thing was that it made the enameling of an article very much easier, and that men were
3 more easily broken into the work.

Q. Was this advantage so marked as to have been of importance, in your judgment? A. It certainly was.

Q. You say in substance—if I correctly remember your testimony—that as regards the application of the enamel to the ware, this was the most important advance which had been made down to that time. Do you know of any other appliance for applying enamel at the present time which you could use with equally satisfactory results?

A. I know of no other device that could be made to take its place satisfactorily.

4 Q. What is your present output of tubs?

THE WITNESS: By the turn?

MR. CHRISTY: By the day of twenty-four hours?

A. That would be three turns; a day consists of three turns of eight hours each, and our average output of the average tub is from forty-eight to fifty-one for the twenty-four hours to the furnace, which runs approximately from fifteen to seventeen per turn. Greater outputs than that have been made, but I am giving you the approximate average.

Q. And how many bath tub furnaces have you in operation at the Standard plant? 1

A. At the Standard works we have nine regular bath tub furnaces, but we have other furnaces adapted to making bath tubs in, and have run as high as twelve or thirteen.

Q. Would it be possible for you to produce bath tubs at your present rate by the use of the hand dredge or any other appliance known to you except the Arrott dredger for applying the enamel to the tub?

A. In the first place, I believe that if we went back to the old style dredge our enamelers would first quit in a body, and if they did not, I would expect the output to fall off from 40 to 50 per cent. 2

Q. Then, what have you to say as to the importance to your business of the use of this Arrott dredger for applying the enamel?

A. If we had to abandon the Arrott dredger, it would be an immense step backwards, both in regard to output and the quality of the product.

Q. How about inspection nowadays; how does it compare with the inspection of tubs and other enameled ware prior to the introduction of the Arrot dredger?

A. I would have to say that in my best judgment and belief in the matter, that the rejected tubs today, on the question of quality, are infinitely superior to the best tubs that were made in those days; not that it was absolutely impossible to make a bath tub, and not that they did not do it, but that this was the average way. 3

Q. How about the rejections at the present time, how would they compare with the quality of tubs which went on the market prior to the adoption of the Arrott dredger?

A. I have practically answered that question in my reply to the last, that the rejected tubs today are superior from the standpoint of quality of enameled products, in those points which are considered important today, than the best of the average grade of that day. 4

Q. How far, if at all, is this improvement in the quality due to the Arrott dredger?

A. Very largely; in fact, it would be the greatest item in the ability to produce good ware.

Q. And why is this?

A. Because of the better command of the distribution of

1 the enamel under more advantageous circumstances, with the use of this dredger.

Q. How about the weight of the tubs of the same quality as produced before the adoption of the dredger?

A. The weight of the tubs today is much lighter than it was at that time.

Q. Does the Arrott dredger contribute at all to this?

A. It has, in a very large measure, by enabling the operator to distribute the enamel quicker, covering the surface more rapidly and thereby conserving the heat in the article which it is necessary to conserve in the process of covering
2 the article with enamel.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. There are other important things in the manufacture of good ware than the use of the Arrott dredger, aren't there?

A. Well, good enamel, to begin with, is very essential.

Q. That is absolutely essential, is it not?

A. Yes, it might be said to be absolutely essential.

Q. How about the slush?

A. The slush is a very necessary part of the process; yes,
3 sir.

Q. And it has taken years of study to arrive at the proper formula for making the slush and also the proper formula for making the enameling powder, is not that right?

A. Yes, but successful powder was made and successful slush was made before the days of the Arrott dredger.

Mr. GROSVENOR: I am not referring to the Arrott dredger; just answer my question.

THE WITNESS: Oh, I beg your pardon.

Mr. GROSVENOR: Will you read the question, please.

The last question was then read by the stenogra-
4 pher.

THE WITNESS: I will have to admit that I hardly know how to reply to that correctly. According to the best of my knowledge, the enameling slush or first coat and the enamel itself has to exist to a satisfactory extent to admit of enameling at all successfully, always.

Q. When was enameled ware first made? I do not mean

spoons and kitchen ware, but I am referring, of course, to sanitary enameled iron ware. 1

A. Well, before my knowledge of the business.

Q. When did your knowledge begin?

A. My knowledge of the business began with my employment by this company.

Q. In '93?

A. Yes, sir; I was totally ignorant of the business when I went with them.

Q. There have been many improvements in the art since then?

A. Yes, sir, there have been many improvements. 2

Q. The powder has been changed?

A. From the time I entered the employ of this company down until 1901 I was not in custody of the enameling secrets of the company down to that time, so I could say nothing about it. I will have to say to you now that the enamel which was given to me at that time was the best enamel known to the business today.

Q. In 1901? A. Yes, sir.

Q. You have not changed your enamel, then, since 1901?

A. Yes, sir, we have, but I considered that the best enamel made. 3

Q. Have you changed your enamel since then?

A. More or less.

Q. How about the slush coat?

A. The slush coat has been changed frequently and is the subject of frequent change, but the slush coat given me at that time I consider as good as any ever invented since.

Q. Do you consider that slush coat of 1901 as good as that used by you today?

A. First the enamel was mixed for me, then it was mixed by me and then by my son for a term of years, then by another man, who is now in charge of it, and for the last two 4 years back we have had a general superintendent of enameling, who has more direct charge of the enameling part of the business or what the enameler shall consist of than I have personally, and I could not answer your question categorically, right up to the minute on that.

Q. He has charge, then, of the powder making and the slush making?

A. Yes, those two things are parts of each other.

1 Q. You cannot say, then, whether those two things have or have not been changed in the last two years?

A. I can say they have been changed in part to try to make them better, but to say what those changes consist of, I could not state.

Q. The formula for making the slush is a secret, is it not?

A. Well, everything connected with the making of the enamel is a secret.

Q. How about the making of the casting, that is the analysis of the pig iron which goes into the casting; is that a secret?

2 A. Oh, I don't think so. I would not say it was a secret. There are few businesses conducted by people who consider themselves up to date, where they tell all about it to everyone. We go into the market and buy all kinds of pig metal that are known in the different grades, and then we make different mixtures to get the mixture that will work best.
make different mixtures to get the mixture that will work best.

Q. Now, this mixture of the different kinds of pig iron, have you a formula for that?

A. I have my own formula; every other foreman has his.

3 Q. Is that one of the secrets?

A. Well, I would not consider it a secret.

Q. In other words, it is not as important as the powder and the slush?

A. No, not by any means. I will tell you what my metal mixture is.

MR. GROSVENOR: No, we don't want you to.

THE WITNESS: There is a whole lot of sand being thrown in people's eyes, you know. On the subject of pig metal in bath tubs, or iron in our business, what we have got to have is good pig metal, free from pro
4 nounced characteristics that are deleterious to the process.

Q. What sort of a hand dredge were you using before you adopted the Arrott dredger in the Allegheny factory, a short handle dredge?

A. Well, that might be comparative.

Q. I show you Petitioner's Exhibit No. 279 and ask you if it was this form of hand dredge?

A. That form, but very much smaller.

Q. Very much smaller? A. Yes.

Q. Was it supported from the ceiling?

A. Not at that time.

Q. That is, you did not adopt a counterweight until you put in the Arrott dredger, is that right?

A. I think that would be a correct statement.

Q. But at the New Brighton factory of the Standard they had adopted the long handle dredges supported by a counterweight before the Arrott dredger was introduced?

A. I was never in the New Brighton factory until four or five years after the Arrott dredger was produced and used.

Q. If this long handle dredge had been used, supported by a counterweight, it would enable the workman to stand further away from the tub, would it not?

A. Not and do good work.

Q. Your testimony conflicts with that of the foreman of the enameling department of New Brighton. A. I can't help it.

Q. Did you ever try this long handle dredge at Allegheny?

THE WITNESS: Never, to my knowledge—that is, you mean now in actual practice and work?

Mr. GROSVENOR: Yes.

THE WITNESS: Or to make a test with it?

Mr. GROSVENOR: Either.

A. I saw a test of it made.

Q. When, a few weeks ago? A. Yes, sir.

Q. On one tub? A. I think on one tub, yes, sir.

Q. Otherwise you never saw any application of it?

A. I never saw it.

Q. The short handle dredge is the one you tried at Allegheny?

A. Well, a dredge with a handle long enough to do satisfactory work. Some handles were a little shorter and some a little longer, depending on the man who used it.

Q. I now show you Petitioner's Exhibit No. 278 and ask you if this is the type of hand dredge you used to use at Allegheny? A. That is about the type.

Q. And that is the only kind you used?

A. Prior to the introduction of the Arrott dredger that was the typical large sized dredge for us.

Q. The large sized? A. Yes, we had smaller ones.

Q. Smaller ones for the rims?

1 A. Well, for various purposes.

Q. Did you ever go over the works of the United States Sanitary Manufacturing Company?

THE WITNESS: Do you mean at Monaca?

Mr. GROSVENOR: Yes, I guess so.

A. I visited that works once.

Q. How long ago?

A. Possibly a year and a half or two years.

Q. 1909?

A. I connect my visit there with a law suit that the
2 Standard Sanitary Manufacturing Company had with the people who supplied the coke and the cupola man—

Q. Don't go into all of that now, but does that help you to specify whether it was two years ago?

A. Approximately two years ago, yes.

Q. They were using the Arrott dredger then, weren't they?

A. I don't know; I did not make any examination. I was merely taken through by courtesy, not with the purpose of inspecting the plant at all.

Q. They have had shop rights to use the Arrott dredger
3 since the organization, haven't they?

A. I understand they have. I believe they have. But, I could not answer that, though. There was a law-suit connected with that, and I don't know how that was fixed up, except by hearsay.

Q. Which are your best tubs today, your heavy tubs or your light tubs? A. A light tub well laid—

Mr. GROSVENOR: Just answer the question without going into a description. We will get the description later. Read the question, please.

Stenographer then read the last question.

4 A. Well, all tubs are the same, in whatever grade they are made in.

Q. Take the "Nemo," is that your cheap tub?

A. The "Nemo" tub is a cheap tub.

Q. Is that a light tub? A. Yes, sir.

Q. How about your "Luxor," is that your high-grade tub?

A. I never made the "Luxor."

Q. Where is that made, at New Brighton?

A. New Brighton.

Q. Is the "Luxor" a heavy or a light tub? 1

A. I am unable to answer that, except in a general way.

Q. Answer it in a general way.

A. The effort of the company is to make the lightest possible tub that will make a good tub, for reasons other than enameling.

Q. Is your "Luxor" a better tub than your "Nemo?"

THE WITNESS: In what way do you mean?

MR. GROSVENOR: Is it a higher priced tub?

A. I never made the "Luxor" tub myself, but it is a higher priced tub. 2

Q. It costs more? A. Yes, sir.

Q. State the high grade tubs that you manufacture?

A. We manufacture the "Essex."

Q. Is that the best tub you manufacture? A. No, sir.

Q. Well, what is the best tub you manufacture?

A. That is the "Albion" tub.

Q. Is the Albion tub a heavier tub than the "Nemo?"

A. It is a much larger tub.

Q. Is it a heavier tub?

THE WITNESS: I will have to understand what you mean by that before answering. Do you mean is it thicker? It must be heavier if it is larger. 3

MR. GROSVENOR: Yes, is it thicker?

A. We aim to make it approximately the same thickness.

Q. What is the size of the "Nemo?"

A. The size of bath tubs—

Q. I am asking you the size of the "Nemo."

A. There are various sizes of it.

Q. Well, give them, then.

A. Four and a half, five, five and a half feet long, that is.

Q. Are your patterns all the same thickness? 4

A. They are, as nearly as we can make them.

Q. That is, no matter what the grade or the kind of tub?

A. The question—

MR. GROSVENOR: Just answer that, will you, please?

THE WITNESS: I don't know whether I can answer it. What is the question, please?

The stenographer then read the last two questions and answers.

A. I would have to make the same answer, and I might ask to be allowed to explain.

Q. What is the same answer?

A. Well, we tried to make them all one thickness, approximately. There are parts on the tub, though, that for manufacturing reasons we consider it necessary to vary the thickness.

Q. What parts of the tub are those?

A. Well, the rim is heavier than the body.

Q. That is true of all tubs, is it not?

A. More or less, but the larger the rim, the greater the variation of thickness.

Q. Have you been making any experiments at the Allegheny plant with a view to substituting an electric dredger for the Arrott dredger within the last year?

A. Not within the last year, no.

Q. Within the last several years?

A. An experiment was conducted there possibly some two or three years ago or inside of that time; possibly more than two years and less than three, to try an electrical dredger out.

Q. You testified that your rejected tubs today were infinitely better than the best that were made ten years ago, is that right?

A. No, prior to the introduction of the new dredger.

Q. Well, during these ten years you have made other changes than in the dredger, haven't you?

A. I meant to reply to that that the same enameling apparatus which was in use ten years ago is the same as is used now, speaking broadly.

Q. Can merchantable, salable enameled ware be manufactured by the hand dredge?

A. It was manufactured by the hand dredge prior to the introduction of the new dredger.

Q. Can it be today?

A. I would say not at the same price or of the same general average quality.

Q. In other words, in using the hand dredge, there are more apt to be imperfect tubs than in using the Arrott dredger? A. Yes, sir.

Q. But you do get good tubs with the hand dredge, don't you?

A. I consider it possible to make what would be classed as a fair tub by the hand dredge. 1

Q. The Arrott dredger is, though, an economical advantage in the manufacture?

A. Yes, it is undoubtedly, in my opinion.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. As to this matter of the possibility of making, as you express it, "a fair tub" with the hand dredge at the present day, do you think that a workman could produce, regularly, tubs, which you would call fair quality, by hand?

A. No, I would not consider that the hand dredge could compete with the improved dredger, and I would not like to be in a position to have to make the change. 2

Q. Could you make the change, in your opinion, and, even at greater expense, get the same quantity of good tubs that you do today?

A. I reckon we would have to bring into existence 50 per cent more enameling capacity in furnaces and the necessary conditions to produce the ware.

Q. Could you maintain a regular production of as good ware as you do today? A. I don't believe we could.

3

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Did you take any part on behalf of your company in the entering into of the license arrangement with Mr. Wayman as to the use of the Arrott patent?

A. No, sir, none whatever.

Q. Did you know anything about it until the arrangement was concluded?

A. I did not know anything about it except by hearsay and talk that some kind of an arrangement was contemplated.

Q. You consider this Arrott dredger of great value? 4

A. I do as an adjunct to the enameling business.

Q. Would you be able to place any value, in dollars and cents, upon it?

THE WITNESS: In what way do you mean, now?

Mr. GROSVENOR (reading the question).

Stenographer then read the last question.

THE WITNESS: I don't think I quite understand the question.

1 Q. Is the sole right to use the Arrott dredger worth one hundred thousand dollars?

Mr. CHRISTY: Objected to as speculative.

A. That would depend largely on how much use you had for it.

Q. Well, take it in your plant; is it worth to you in Allegheny one hundred thousand dollars a year?

THE WITNESS: A year?

Mr. GROSVENOR: Yes?

THE WITNESS: That is a large sum.

2 Mr. GROSVENOR: Will you answer the question? Just read it to him, please.

The stenographer then read the last question.

A. I am afraid I would have to buy it as against any other method that I know.

Q. Even if it cost you $100,000 a year?

A. I don't know how I could get along without it and keep up with the crowd. That would be up to those who were my superior officers, whether to buy it or not. I might not have a voice in it.

3 Q. Are you a stockholder or director in the company?

A. I am a stockholder.

Q. Are you a director? A. I am a director.

Q. Was the subject of entering into a license agreement with Wayman discussed at any of the meetings of the directors?

A. No, sir. A statement was made that a contemplated trade arrangement was going to be entered into, but there was no discussion of it. It was a matter within the hands of the executive committee.

Q. And they were authorized by the Board of Directors

4 to enter into such an arrangement?

A. No, sir; there was no authorization asked for and no action taken.

Q. The executive committee simply reported that they had done it?

A. No, sir, they never reported that they had done it. It was prior to the time the matter was being discussed and talked about.

Q. When was it discussed at the Board of Directors?

A. It was not discussed there at all. The statement was

made that the executive committee was considering the ad- 1
visability of entering into a trade arrangement.

Q. Who made that statement?

A. The statement was made by the president of the company.

Q. Entering into a trade arrangement with whom?

A. Well, with the trade generally, I understood.

Q. With the other manufacturers?

A. Well, I don't know how comprehensive it might have been understood to be. It was stated to be a trade arrangement and that was about all that was stated.

Q. Did this statement go down on the minutes of the 2
meeting? A. I don't know; I don't think so.

Q. Who has charge of the minutes? A. The secretary.

Q. At any meeting of the board of directors at which you were present, was the subject of making a loan of stock to anyone, in connection with this trade agreement, discussed?

A. No, sir.

Q. Or the loaning of cash money to Wayman or anybody else?

A. Never; it never was mentioned at any meeting of the board of directors. I have attended all meetings.

Q. When was this statement made? 3

A. I think it was in the April meeting of last year.

Q. April, 1910?

A. Yes, I think it was. It was when I heard the matter discussed that there was going to be some kind of a trade agreement made.

Q. Then you asked about it? Someone asked about it?

A. No one asked about it. The president made the statement that the executive committe was considering the advisability of entering into a trade agreement.

Q. Who was on the executive committee?

A. The Executive Committee consists of the president, 4
the first vice-president—

Q. Who is he?

A. The first vice-president, Mr. Torrance, and the secretary and treasurer, Mr. W. A. Myler, and the general manager, E. L. Dawes.

RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. In referring to this mention of a contemplated action of the executive committee, did you intend to state accu-

rately the language used, or only the impression which you received? A. Only the impression.

Q. But you did not mean to assert that Mr. Ahrens used the particular words in which you have expressed it, did you?

A. No, I understood that some arrangement or agreement of some sort was contemplated and which had not been executed.

Q. But you did not understand and did not pretend to understand what that arrangement was? A. I did not.

RE-RECROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you state just exactly what was said?

Mr. CHRISTY: Defendants' counsel has not heretofore objected to questions of this kind. Now that a more detailed question is asked, he does object to it both as improper cross examination, in that counsel is making the witness his own, and secondly for the reason that evidence as to a mere verbal statement like this can hardly be called satisfactory proof.

Mr. GROSVENOR: Read him the question, please.

Stenographer then read the last question.

A. I can only state in substance my understanding of what was said.

Q. Will you state that to the best of your recollection?

A. To the best of my recollection the statement was made—

Q. By Mr. Ahrens?

A. By Mr. Ahrens, that some kind of agreement—trade agreement—was in contemplation by the Executive Committee.

Q. Did he state with whom?

A. He did not state with whom, to the best of my recollection.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOSEPH VARLEY, a witness of competent age, produced on behalf of the defendants, having first been duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. State your full name, age, residence, and occupation?

A. Joseph Varley; 46 years old; residence Mansfield, Ohio; occupation, enameling foreman.

Q. For what company, sir?

A. The Humphryes Manufacturing Company.

Q. How long have you been employed by the Humphryes Manufacturing Company? 2

A. Since the 4th day of last September.

Q. Where were you employed previous to that?

A. Previous to that I was with the Colwell Lead Company, in Elizabeth, New Jersey.

Q. How long were you there? A. Fourteen months.

Q. And before that?

A. Previous to that I was with the Humphryes Manufacturing Company for two years and a half. Previous to that I was with the Dawes & Myler Company for two years and a half, and previous to that I was off on account of my health from the business, but previous to the time that I was off on account of my health, I was with the Dawes & Myler Company for about nine years, as enameler. 3

Q. You started in the business with the Dawes & Myler people? A. Yes, sir.

Q. First as helper and then as enameler?

A. First as slusher.

Q. And you worked your way up?

A. Yes, sir; I worked my way up.

Q. When was it you were first an enameler?

A. If you can tell me when the Dawes & Myler plant started—I think it was '85. 4

Q. You went with them then? A. Yes, sir.

Q. And when did you become an enameler?

A. Why, I went to enameling about four weeks after being with them.

Q. And you have been in the enameling business, either

1 as enameler or foreman of the enameling department, ever since? A. Off and on for about twenty-two years.

Examination Suspended.

The hearing was then adjourned until the following morning, March 30, at 10 o'clock, at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF MARYLAND.

2 THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburg, Pa., Federal Building,
March 30, 1911.

3 Pursuant to adjournment, the taking of testimony on behalf of the Defendants was resumed this thirtieth day of March, 1911, at 10 o'clock A. M., at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

JOSEPH VARLEY, a witness heretofore produced and sworn on behalf of the Defendants, resumed the stand for
4 continuation of direct examination and testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. When did you first see the pneumatic dredger used for sifting enamel on tubs?

THE WITNESS: Do you want the date of that?

Mr. CHRISTY: As near as you can recall. If you do not remember the exact date, state where you first saw it?

A. I saw it at the Dawes & Myler plant at New Brighton. 1

Q. That was at the time you were at the Dawes & Myler plant before you went with the Colwell Lead Company?

A. That was the time I was at the Dawes & Myler plant, yes, before I went with the Humphryes Manufacturing Company the first time.

Q. Was it being used through the whole factory then?

A. Yes, sir.

Q. What was your position?

A. I had charge of the sandblasting and cleaning of the ware.

Q. Then you were not enameling then? 2

A. Not at that time.

Q. Did you ever use it yourself?

A. Yes, sir; not at the Dawes & Myler plant, but I had used it at the Colwell Lead and also at the Humphryes.

Q. How did the pneumatic dredger compare with the hand dredger as respects the men themselves, the labor in applying the enamel?

THE WITNESS: The men physically?

Mr. CHRISTY: Yes.

A. Well, I had about nine years' experience with the hand 3
dredge, making anything from a small lavatory to a pool bath; I find that the hand sifter is very crude compared to the pneumatic sieve in this way. Have you a hand sifter here? I could demonstrate much better than I could explain it to you.

(A hand dredge was then produced.)

THE WITNESS: The old hand sifter keeps you in a cramped position all the time, that is, of the wrist, of the left shoulder, and also the wrist of the right hand. It is a constant tap, and the cramped position your wrist is in—you see the wrist is thrown out of its natural position— 4

Q. (Interrupting): You mean the wrist of the left hand?

A. Yes, sir; when you have fifteen to twenty pounds of enamel in that sieve, and you have that resting on your elbow and the only support you have is your elbow, and that thing slides off, you have no idea what a strain there is on the wrist. I have seen and I know cases where the wrist has been paralyzed.

1 By Mr. Christy:

Q. The left wrist?

A. The left wrist has been paralyzed by the use of the sieve. You do not have the free use—

By Mr. Grosvenor:

Q. You are talking of the old short-handle dredger?

A. Yes, sir; and beater.

By Mr. Christy:

Q. How was it with the long-handle dredge?

2 A. The long-handle was a little easier than the short-handle, simply because we had a counter-balance on the end. I think I was the originator of the long-handle swinging dredge at the Dawes & Myler plant.

Q. How about the guiding of the long-handle dredge over the ware; is that difficult or easy?

A. It was a little more difficult than the short-handle sieve.

Q. Why?

A. Why, on account of being so far away from your work. It permitted you to get farther away from the heat. With the

3 short-handle dredge I remember when they made us tin aprons, and they would fill those with water and we worked with them on.

Q. You did not need that with the long-handle dredge?

A. No, sir; because we were not so near.

Q. You were not as near the work and that was a disadvantage, wasn't it?

A. Yes, sir; you take this hot metal and stand within eighteen inches of it part of the time and your stomach gets hot. Mr. Dawes and Mr. Myler got up the tin apron which could be filled with water to overcome that intense heat on

4 a man's stomach. Now, as to the pneumatic dredger: You take the pneumatic sieve, while this is not constructed just the same as ours—

Q. This (indicating) is Petitioner's Exhibit No. 280 to which you refer?

A. Yes; our handle is a little larger. We have done away with this kind of a trigger on ours and just have a button and the sliding lock, you might say; now, a man taking this sieve has the free use of his hand; you do not have to hold that

sieve in this way (indicating). This is the way you hold that 1
sieve and after you turn your lock on your button, you can take hold of it here and you have free use of it.

Q. And that was easier on the workmen?

A. Yes, sir; and the more easy distribution of the enamel.

Q. It improves the ware?

A. Yes, sir; it gives you a smoother piece of work. It does not get wavy.

Q. How about the number of pieces produced? Could they produce more?

A. When I was making bathtubs—and I have made every- 2
thing along that line from a glue cup to a pool bath—when we started to make tubs in the Dawes & Myler plant, which I think must have been 1886 or '87—I cannot just remember, we would make at that time five and six tubs a day. Of course, we would slush what we made at that time, that is put on the first coat. At the present time, showing you the increase in production from that time to the present time, we were working in those days ten and twelve hours, ten hours in the day and twelve hours in the night, and the present time I have men who are making bathtubs every day and are turning out from sixteen to twenty tubs in eight hours.

Q. That is with the pneumatic dredger? 3

A. That is with the pneumatic sieve; you could not do that with the old hand sieve; a man could not stand it.

Q. You could not possibly make that production, you say, with the hand sieve?

A. You could not possibly make that production with the hand sieve. Then, there is another thing with the old hand sieve: With the hand sieve you have to stand facing the work all the time; there is no such thing as turning sideways to the heat; you must stand directly in front of the work, but with the pneumatic we can stand with our side to the work, which is a great advantage. We make just as good work that 4
way.

Q. How about the inspection nowadays, is that more severe than it was in '98?

A. The inspection of the ware at the present time is the most rigid thing we have to contend with.

Q. How does the quality accepted compare with the quality accepted in '98?

A. The quality accepted at the present time must be A No. 1. A piece of ware—take what we call our non-guaran-

1 tees, which is an inferior class of goods, they would have been counted in those days A No. 1.

Q. Would the average quality in '98, that is I mean the average quality as respects the application of the enamel, be acceptable today? A. Not as first-class stuff.

Q. You mean it might be acceptable as seconds?

A. Oh, yes, it would be accepted as a second-grade tub, but there is an exception right there. A man could today, maybe with one tub he might make an A tub with the old hand sieve, but to keep it up, one tub after the other, he could not do it, but we do it with the pneumatic sieve.

2 Q. Right along? A. Yes, sir.

Q. But with the hand sieve you only got them occasionally? A. Yes, sir.

Q. Have you reduced the weight of the tubs now from what they were in '98?

A. Oh, yes, we reduced the weight of our tubs.

By Mr. GROSVENOR:

Q. Whom do you mean by "our"; you have worked with several companies?

A. The Humphryes Manufacturing Company. We are 3 making our tubs at the present time from twenty to thirty pounds lighter than they were when I was there before.

By Mr. CHRISTY:

Q. Before they were using the hand sieve, is that right?

A. Well, before they were using the electric.

Q. What is the cause of whatever reduction in weight of tubs there has been?

THE WITNESS: What is the cause?

Mr. CHRISTY: Yes.

THE WITNESS: In what way?

4 Mr. CHRISTY: I mean, how were you able to reduce the weight of the tub?

A. We were able to reduce the weight of the tubs by reducing our patterns.

Q. Could you with the hand dredge—

Mr. GROSVENOR: I object to that as leading.

Q. Could you with the hand dredge satisfactorily enamel tubs as light as you now make them?

A. The hand dredge and the enameling of tubs, the time you would take a tub from the furnace and throw it on the table and get your sieve and then with our asbestos gloves— 1

Mr. GROSVENOR: What is he talking of, the long-handle dredge?

A. (Continuing): No, sir; the short-handle dredge. We used the asbestos gloves on each hand; at the present time we use one asbestos and one common cloth. By the time we are ready to put the enamel on that tub, the tub would be chilled, that is if we took the weight of the tubs at the present time, and by the time we got through sieving, the enamel would not have adhered to the slush or first coat good enough to hold it, and the least little bump would knock the powder down to the bottom of the tub. 2

Q. Do the workmen using the pneumatic sieve lose as many tubs as formerly with the hand dredges at the Dawes & Myler works? A. No.

Q. Can you give us any idea what the difference is?

A. I know from my own personal experience in making tubs in those days and being foreman over the men making the tubs at the present time, that the losses are smaller.

Q. That is the losses right in the enameling room? 3

A. Yes, sir.

Q. How about training the men? Does the pneumatic dredger make that easier?

A. Yes, sir; why, I took one case when I was with the Colwell Lead Company—I took a young man who was making $1.50 a day, which I could not have done under the old hand system of dredging, and in less than three months time, he was making $4. I got him to making smaller ware. One of the hardest things that we have to make is lavatories—

Q. At the Colwell Lead they used the long-handle dredge?

A. When I got there they were using that sieve standing over there (indicating). 4

Q. With the harness arrangement?

A. Yes, sir; and when I took charge of the plant I put in the pneumatic sieve.

Q. Was the electric dredger a success at the Humphryes plant?

A. No; the enameling men objected to it very strongly.

Q. What was the matter with the men, why did they object?

1 A. Well, in the first place, it is much heavier than the pneumatic dredger and during a thunder storm they would frequently get shocks, and another thing about the electric is that we could not get the proper vibration.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Varley, did you take any part on behalf of the Humphryes Manufacturing Company in the negotiations which resulted in the taking out of the license to use the Arrott patent from Wayman? A. No, sir.

2 Q. Or any of the meetings during 1910, with that object in view? A. No, sir.

Q. Or, did you attend any such meetings or take part in any such negotiations on behalf of the Colwell Lead Company while you were there? A. No, sir.

Q. Did you take part on behalf of any of the other defendants? A. No, sir.

Q. Did you know anything about the license arrangement until it was completed?

A. I did not know anything about it until it was in operation. I got my first idea from the New York American, I

3 think.

Q. Were you then with the Colwell?

A. I was with the Colwell Lead at that time.

Q. Did you know anything about the making of the powder? A. I certainly do.

Q. Is that an important branch of the business?

THE WITNESS: Is it what?

Mr. GROSVENOR: Read that, please.

The stenographer then read the last question.

A. Yes, sir; that is the secret part of our work.

4 Q. You say that is "the secret part"?

A. Yes, sir; the secret part of our work.

Q. Is the slush also a secret part of your work?

A. Yes, sir.

Q. Those are the most important things in the business, aren't they, to get an enameling powder and a good slush?

A. They are the most important things that we have; yes, sir; without a good slush and a good enamel there would be no use in going into the sanitary manufacturing business.

Q. And a good enamel, you say? A. Yes, sir.

Q. A great deal of study has been given to those two things since the first enamel ware was made in 1884? A. Yes, sir. 1

Q. A great many of the improvements in the ware are due to changes in the powder and in the slush, aren't they?

A. Well, yes; we can make things at the present time with our process of enamel, having a less tendency to chip or craze than we could at those times. We are more versed along the line of enamel.

Q. When you left the Colwell Lead Company, were they using the hand dredge?

THE WITNESS: When I left the Colwell Lead?
MR. GROSVENOR: Yes. 2

A. When I left they were using the pneumatic in the daytime, and the old banjo, as they called it, at night.

Q. That was in September, 1910? A. Yes, sir.

Q. How many furnaces had they?

A. They had three when I was there.

Q. Were they running them all?

A. They were running them all when I left; yes, sir.

Q. At night, I suppose by using the hand dredge, they saved the expense of running the compressed air plant?

A. That was the idea, to cut out the expense of running that plant at night just for the enameling department. 3

Q. When did they install the pneumatic dredger for use during the daytime at the Colwell Company?

A. I went there in June—I think as near as I remember along the latter part of August or the forepart of September; I won't be positive of that, of course.

Q. In 1910? A. In 1910.

Q. In any event you do recall—

THE WITNESS: Just one minute, please. This is 1911—no, that was in 1909; I went there in June, 1909, and left there September, 1910. 4

Q. You installed, then, the pneumatic dredger shortly after you went there?

A. Yes, sir.

Q. And they were using it until you left, in the daytime?

A. Yes, sir.

Q. And during all this time were they using the hand dredge at night? A. Yes, sir.

Q. Now, at the Humphryes Manufacturing Company,

when you went there in September, 1910, what were they using? A. Using the pneumatic sieve.

Q. How many furnaces have they?

A. They have five, and we are running three at the present time.

Q. You use pneumatic sieves both night and day?

A. We use the pneumatic sieve both night and day.

Q. And you have since you have been there?

A. Have since I have been there.

Q. On the occasion of your earlier work, with the Humphryes Company, that is the other time you were there, they were using an electric dredger, weren't they?

A. Yes, sir; an electrical dredger part of the time and the pneumatic sieve part of the time.

Q. What year was that?

A. That was fourteen months previous to September 4, 1910.

Q. That is, in June, 1909, you went to the Colwell and before that you were with Humphryes? A. Yes, sir.

Q. How long? A. Two years and a half.

Q. And during all that time they were using an electrical dredger and a pneumatic? A. And a pneumatic; yes, sir.

Q. That is the Arrott dredger? A. Yes, sir.

Q. Is it not a fact that good enameled ware may be made with the hand dredge?

A. As I remarked in my evidence here, you might possibly make one good piece of enameled ware by the hand process, but you cannot turn out the production and turn it out as good as we can with the pneumatic sieve.

Q. That is, the average is better with the pneumatic sieve?

A. Yes, sir.

Q. The great disadvantage of that short-handle dredge is the fact that it brought the workmen so near the hot tub, is that true?

A. Well, that was one of them; it doesn't give you an even distribution of powder.

Q. I am talking now of the effect upon the workmen?

A. Yes, sir; that was one.

Q. And the weight was the other? A. Yes, sir.

Q. And the tapping was the other?

A. Yes, sir; and the cramped position.

Q. With the long-handle dredger you got further away from the tub?

A. Yes, sir; with the long-handle dredger you got further away from the tub, but you could not see the work as well. 1

Q. But you were still relieved of the extreme heat?

A. Yes, sir.

Q. With the Arrott dredger you stand nearer than with the long-handle dredger? A. Yes, sir.

Q. The weight of the Arrott dredger is supported like the weight of the long-handle dredger, with the counter-balance?

A. No, sir; we use ours without a counter-balance, no counter-balance at all with the pneumatic sieve.

Q. Even for the heavy work?

A. For anything, tubs or smaller ware. 2

Q. When you were with the Colwell Lead Company, who had charge of the enameling department?

A. The mixing of the enamel, Mr. John A. Lefferts.

Q. He was your superior? A. Yes, sir.

Q. Who was the head of the factory?

A. Dr. Jesse Duryea.

Q. Was he frequently at the factory?

A. No, sir; occasionally in maybe two months.

Q. He did not have actual supervision of the making of the ware?

A. No, Mr. Lefferts and I were the only two that had anything to do with the supervision of the enameled ware. 3

Q. Did you ever see Dr. Duryea out there while this hand dredge was being used at night?

THE WITNESS: At night?

Mr. GROSVENOR: Yes.

A. No, he never came at night that I know of.

Q. Did you ever see him out there when the hand dredge was being used?

A. I suppose after I had been there three weeks he came over there one day and went through the enameling department, and I suppose he saw them using it, because they were working then. 4

Q. That was the hand dredge? A. Yes, sir.

Q. Any later time?

A. Any later time that he came out there during the day they were using the pneumatic.

Q. Did you see him there during the nighttime at any time?

A. I never saw him there during the night time, because I was not there myself.

Q. Did you talk to him about the saving of expense by using the hand dredge at night and turning off the compressor?

A. I did not talk to the doctor, but I spoke to Mr. Lefferts along that line.

Q. And he agreed with you that it should be done?

A. Yes, sir.

Mr. GROSVENOR: I believe that is all.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. You have referred to the chipping and crazing of the enamel; has the evenness of the enamel anything to do with that?

A. It has along the edge of any ware we make. If the enamel is heavy on the edges it has more of a tendency to chip, or around the overflow or the outlet of any work.

Q. Wherever the enamel is bunched it has a tendency to chip? A. Yes, sir.

Q. How about the crazing?

A. Well, if the enamel is too heavy it has a tendency to lift, that is worse than the craze. If you get the enamel on too heavy, it pulls the flush coat from the enamel. It is not a chip or a craze but it is a lift.

Q. And the pneumatic sieve improved these conditions?

A. Yes, sir; because we could get the enamel on more evenly and quicker.

Q. When you used the hand sieve, in firing the ware after the enamel was applied, was it your experience that you had to flow it in the furnace?

A. With the old hand sieve the unevenness of the vibration would cause our enamel to—what we call—bunch.

BY Mr. GROSVENOR:

Q. Which hand sieve are you talking about?

A. The short handle.

Q. Not the long handle?

A. No, sir; and as you have remarked, we did very often have to give the ware a little more firing to fetch it down to a smooth surface.

Q. With the long handle sieve did the enamel bunch?

A. The greatest trouble I found with the long handle sieve was that you were too far away from your work to see if you were doing it right or not. If a piece of dirt got in there, or a piece of asbestos, you were not close enough to see it until after it was fired. 1

Q. Yes, I know that was a defect, but in using the long handle sieve, didn't you get bunches of enamel?

A. Yes, sir; in the way we had it adjusted it was just as bad as with the short-handle hand sieve.

Q. That is as regards the bunching and so forth?

A. Yes, sir. 2

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What is the full name of Mr. Lefferts?

A. John A.; I couldn't tell you what that middle name is.

Q. Is that dredge which you used in the nighttime the so-called Lefferts' dredge?

A. I couldn't tell you that; it is identical with that sieve that you have there with the strap attached.

Q. This is the one which you identified (indicating)?

A. Yes, sir.

Q. Is that known as the banjo dredge? A Yes, sir.

Mr. GROSVENOR: I offer this dredge as Petitioner's Exhibit No. 284. 3

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 284."

Q. Now, Mr. Varley, if the advantages of this pneumatic dredger over the banjo dredge are so great, why did you use the banjo dredge during that entire year at night?

A. Well, I had nothing to do with the saying of whether we should run the engine at night or whether we should not; that was left to Mr. Lefferts himself. You see, it would have been an expense—we would be running the engine for part of the time two furnaces and part of the time three—that would be an expense that would be too much. 4

Q. Too great to compensate for the difference between the two dredges?

A. Well, in fact, I don't know about that.

Q. You received your orders from him?

A. Yes, sir; that is in regard to changes of that kind. With regard to work I had full charge of that.

Mr. GROSVENOR: That is all.

1 RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. What was the rated horse-power of your boiler at the Colwell Lead Company? A. I don't know.

Q. It was sufficient to run a good many more pneumatic sieves than you were using, wasn't it? A. Oh, yes, yes.

Q. So that if it should be thought to have been an unnecessary expense to keep your boiler going at night for two or three furnaces, it would not follow that if you had six or eight furnaces the same thing would be true?

A. No, I would think if we had six or eight furnaces working at night we would certainly have run the boiler to
2 keep the pneumatic sieve running.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ANDREW RAMMING, a witness of competent age, produced on behalf of the Defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

3 Q. State your full name, age, residence and occupation?

A. Andrew Ramming, 68 Toboggan Street, North Side, Pittsburg, Pennsylvania; age, 45; occupation at the present time, foreman of the small ware enameling department.

Q. Where?

A. At the Standard Sanitary Manufacturing Company at Allegheny.

Q. How long have you been at the Standard works?

A. I have been at the Standard works for eighteen years.

Q. What have you done there? A. Enameling.

Q. You have been an enameler, have you? A. Yes, sir.

4 Q. How long have you been a foreman?

A. Three years this June.

Q. Did you use the hand dredge at the Standard Works in the early days? A. Yes, sir; I used the hand dredge.

Q. Was it like Petitioner's Exhibit No. 278?

A. Yes, sir.

Q. Did you say how long you used it?

A. I am not quite sure, about eight or nine years, I judge.

Q. Then what did you do?

A. Turned from the hand dredge to the air dredger.

Q. What they call the Arrott dredger? A. Yes, sir. 1

Q. That is like Petitioner's Exhibit No. 280?

A. Yes, sir.

Q. How did you find the work of the Arrott dredger compared with the hand dredge?

A. After I got used to it, it was much easier.

Q. Was it less labor?

A. Yes, sir; and less exertion; with the hand dredger you had to use both arms, both hands, hold the dredge with one hand and rap it with the other hand.

Q. And that was hard work, was it?

A. Hard work; yes, sir. 2

Q. How about the ware you produced, could you make more with the pneumatic than with the hand? A. Yes, sir.

Q. Can you give us any idea how much?

A. Well, on some ware you can make, I guess, about one-half as much again.

Q. Does that apply to bathtubs?

A. I am not quite sure, I never worked on bathtubs.

Q. You worked on small ware entirely? A. Yes, sir.

Q. How did you find it with regard to the coat? Did you improve the coat any? A. Yes, sir.

Q. In what way? A. Made it smoother. 3

Q. That was an advantage?

A. Yes, sir; and you could put the powder on quicker.

Q. How about your losses, did you lose as much with the pneumatic as with the hand dredge? A. No, sir.

Q. Enough to be noticeable?

A. No, sir; we did not lose as much.

Q. I mean was the difference between the two noticeable?

A. Yes, sir.

Q. Using the hand dredge did you ever have trouble with your arms giving out?

A. Yes, sir; my arm would get sore from here to here 4 (indicating).

Q. That is your left arm? A. Yes, sir.

Q. That is the one you held the dredge on?

A. Yes, sir; it was so sore sometimes that when I came to work in the morning I could hardly hold the dredge.

Q. How about the tapping?

A. With the tapping my arm would get sore too.

Q. Could you keep up the pace all over the tub?

A. I could, that is on small ware.

Q. You never enameled tubs? A. No, sir.

Q. How about taking new men and teaching them to enamel, how did the dredges compare on that?

A. Well, on small ware it is pretty hard to break in a man; it was pretty hard with the hand dredge; it would be hard to get the right swing on it and get the powder on even in all places. You would get too much and not enough. You would have only one hand to guide it and it would swing too far and make it heavy in the corners.

Q. How was it with the pneumatic, was it simpler?

A. With the pneumatic it was more simple.

Q. You can teach the men quicker?

A. Yes, sir; you can teach the men quicker.

Q. How about the inspection nowadays, is it more severe than when you used the hand dredge? A. Yes, sir.

Q. Do you think the average quality of ware which you made with the hand dredge could pass inspection regularly now? A. I don't believe it.

Q. What objection do you think would be made to it?

A. It would not have a smooth enough surface on it.

Q. That is, it would be wavy? A. Yes, sir.

Q. Do you know whether you use as much enamel now as with the hand dredge? A. We do not use as much now.

Q. Take some article like a laundry tray, how many would you turn out with the hand dredge?

A. With the hand dredge we used to make sixteen to eighteen in ten hours, and if luck was good, sometimes twenty.

Q. How many of those could you make with the pneumatic dredge?

A. With the pneumatic dredge we could approximate thirty-two or thirty-four.

Q. Does that relative difference hold good with other articles?

THE WITNESS: What was that?

Q. Does that proportion hold good as to other articles?

A. Well, it depends a great deal on the man.

Q. Some men will work better than others. A. Yes, sir.

Q. Take sinks, about what was the average for a turn of ten hours? A. I mean with the hand dredge?

A. We made twenty or twenty-four.

Q. Can you give us the average of the same sinks with the pneumatic? A. Well, thirty-five or forty. 1

Q. In eight hours, that is? A. In eight hours.

Q. How about the wages of the men, do they make as much now as they used to?

A. They make about as much with more production.

Q. Piece price has been reduced?

A. Yes, sir; piece price has been reduced.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Ramming, did you take part in the negotiations on behalf of the Standard Sanitary Manufacturing Company which resulted in the license arrangement with Mr. Wayman? 2

THE WITNESS: How was that?

Mr. GROSVENOR: Will you read it?

The stenographer then read the last question.

Mr. GROSVENOR: I mean, did you know anything about the fact that this patent was going to be assigned to Mr. Wayman?

A. I did not know anything about it.

Q. You did not know anything about it until you read it in the papers afterwards, is that it? A. That is right. 3

Q. Do you have charge of the making of the powder?

A. No, sir.

Q. Or the slush? A. No, sir.

Q. Are those important matters?

A. Important matters; yes, sir.

Q. Does the man who has charge of the making of the powder, that is the mixer, get more wages than the foreman in the enameling department?

A. That is something that I don't know.

Q. You made good laundry trays and sinks when you used the hand dredge, didn't you? 4

A. Yes, I used the hand dredge on sinks and laundry trays.

Q. And you made good laundry trays?

A. Good at that time; if they are good now I do not know.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the taking of evidence was adjourned until 1 P. M.

March 30, 1911.

1 o'clock P. M.

At one o'clock P. M., a further adjournment was taken until 3.15 P. M.

March 30, 1911.

3.15 P. M.

Mr. CHRISTY: Mr. Christy stated that he had expected to examine another witness this afternoon, but has been disappointed in not being able to find him. He therefore suspends the further taking of testimony at this session and requests the Examiner to note an adjournment to meet upon notice.

Mr. GROSVENOR: Counsel for the Government will be ready to proceed on notice by telegram or otherwise.

THE EXAMINER: If you can find your witness, Mr. Christy, any time this evening up until seven thirty, we will be in Pittsburg and can go on tomorrow.

Mr. CHRISTY: Very well, I will telephone you by seven thirty.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburg, Pa., Federal Building, 2

March 31, 1911.

Mr. Christy having found late in the afternoon on March 30, that his witness could be produced this morning and notice to that effect having been given, the parties met by agreement, at 10 o'clock A. M., in the Federal Building, Pittsburg, Pa., and the following evidence was taken:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General. 3
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

JAMES W. ARROTT, JR., a witness of competent age, produced on behalf of the Defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. State your name, age, residence and occupation?

A. James W. Arrott, Jr., 41 years of age; I reside at Sewickley, Pennsylvania; I am not occupied in any active business. 4

Q. Were you ever connected with the Standard Manufacturing Company at Allegheny, and if so, during what period and in what capacity?

A. I was, from the year 1890 until the formation of the Standard Sanitary Manufacturing Company, in 1900; during that time I was superintendent—or the greater part of that time—I was superintendent of the enameling department of the Standard Manufacturing Company.

Q. When did the Standard Sanitary Manufacturing Com-

1 pany commence to operate the Standard Manufacturing Company plant? A. January 1, 1900.

Q. Did you continue with that Company, and if so, in what capacity?

A. I continued with that Company as general superintendent of the Standard Works in Allegheny; that is, it was called the Standard Works after the consolidation, and I continued with them until June, 1901.

Q. Have you been actively engaged in the enameling business since that last date?

A. After that date, with my brothers, we built a plant
2 at Monaca, Pennsylvania, known as the United States Sanitary Manufacturing Company. I stayed with that concern until some time in 1903, when I retired from the business.

Q. You are the inventor and the patentee of the letters patent No. 633,941, are you not? A. I am.

Q. About when did you make this invention and put it in use?

A. I invented the pneumatic dredger in the early part of 1898, that is, the experiments were carried on at that time. It was gradually put into use during the year 1898, and by the first of January, 1899, the entire enameling department
3 of the Standard Manufacturing Company was equipped with this pneumatic dredger.

Q. What were the conditions in the enameling department, that is particularly the way of applying the enamel to the ware, immediately prior to the making of this invention?

A. The conditions before the introduction of the pneumatic dredger were that the enamel was applied by the old style original hand dredge; the production had increased so that the men were not able to keep up with their work. The method of applying the enamel by the old dredge was very severe on the enamelers, so much so that we were en-
4 deavoring to obtain something to relieve them; not only to relieve them, but to, if possible, keep up the capacity of the plant.

Q. What particular difficulties had the men in using the old hand dredge?

A. The worst difficulty was that it affected the muscles of their arms. They held the dredge with one arm or one hand and arm, and rapped it with the other, and in doing so they exerted themselves continuously, so that under cer-

tain conditions they played out and were not able to continue their work. 1

Q. Did you find that the pneumatic dredger helped any as regarded these matters?

A. It did; it relieved these matters at once.

Q. Did it enable the men to make more goods than formerly? A. The production was increased immediately.

Q. Did you find that it made any saving in the enamel itself? A. Yes, there was considerable saving.

Q. Did you make any computations at that time to find out what this saving was?

A. I did, after the year 1899 I had kept records for several years of the amount of enamel used, the wages, etc., and in comparing the costs of these different things for the year 1899 I found that the cost was considerably decreased while the production increased. 2

Q. Can you give the figures which you computed at that time showing the reduction in cost of enamel actually used?

A. I have some figures which I took from my former testimony; I did have others, but I don't know that they are available now; but I have figures in regard to the saving in dollars and cents in amount of enamel used only on bathtubs. I find that in 1899 on 32,114 white enameled bathtubs finished there was a saving of 4.1 pounds of enamel per tub, equalling 37.9 cents per tub, or a total of $12,171.20. On another grade of bath tubs known as gray bath tubs, the saving was 3 pounds of enamel per bath tub, equalling 18 cents per tub, and on the total of 9,518 tubs produced the saving was $1,713.24. The total saving on both kinds of bath tubs in enameling materials was $13,884.44 in the year 1899 over 1898. 3

Q. Did the adoption of the pneumatic dredger improve the quality of the ware? A. It did.

Q. In what respect? 4

A. The most noticeable respect was the smoothness of the enamel.

Q. How was it with the old dredge?

A. With the old dredge, well, some enamelers at times could produce very nice ware, yet taking it all in all, the enamel was irregular and we had to accept ware that was not evenly enameled. With the pneumatic dredger the ware, as a whole, was more uniform and of better quality, better appearance.

1 Q. Did the adoption of the pneumatic dredger render possible improvements in furnace capacity, and if so, how?

A. Yes, it did; at the time the pneumatic dredger was adopted and in fact before that, the capacity of the furnaces was greater than what the men were able to take care of, so that as soon as they were able to take care of the capacity of the furnace, the capacity of any furnace could be increased, and after that improvements were made on furnaces that still further increased the output per furnace.

Q. But could those improvements have been economically availed of without the pneumatic dredger?

2 A. I don't believe they could. I don't believe the men would have been physically able to take care of this increased product.

Q. Some question was raised with one of the witnesses here as to the date when the pneumatic dredger was introduced at the Dawes & Myler plant at New Brighton. Can you fix this date approximately?

A. I remember sending to the Dawes & Myler Works at New Brighton the pneumatic dredger similar to those we used at the Standard plant, and this was in January, 1900.

Q. That was immediately after the organization of the

3 Standard Sanitary Manufacturing Company?

A. That was shortly after the organization.

Q. Did you visit the Dawes & Myler Works personally at that time? A. I did.

Q. What kind of dredge were they using there?

A. They were using a hand dredge suspended by a rope or wire, I don't know which, over a pulley. The dredge was considerably longer than those hand dredges we had used at the Standard Works.

Q. I show you Exhibit No. 278; is this the style of bath tub dredge which you used at the Standard plant at Alle-

4 gheny?

A. Yes, sir; that (indicating) is practically the same.

Q. I show you Petitioner's Exhibit No. 279; is that the style of dredge which you saw at the Dawes & Myler plant?

A. That looks like it.

Q. What advantages and disadvantages did the long handle dredge, used at the Dawes & Myler Works, have in comparison with the dredge you used?

A. The only advantage I could see with the long handle dredge was that it removed the enameler farther from the

hot casting; otherwise, I think it was a great disadvantage over the short handle dredge which we formerly used at the Standard Works. 1

Q. In what respect was it disadvantageous?

A. Well, it was awkward; it was difficult to move over the surface of the bathtub or any casting being enameled. It was harder to control. It required a harder rap, because the enameler was farther away from the sieve, and he would have to hit harder to communicate the vibration to the sieve than with the short dredge.

Q. One other matter incident to the adoption of the pneumatic dredger: Did it lead you to change the mesh of the sieve? A. It did. 2

Q. How did you change it and with what results?

A. Formerly the wire mesh cloth was No. 40; that is, forty holes to the inch; and after we adopted the pneumatic dredge I changed the wire cloth to that of 50 mesh to the inch, and also had the enamel ground finer. The object was to get a solider enamel, a finer enamel, and also that it would be distributed in smaller particles over the iron surface.

Q. Did that improve the product?

A. Undoubtedly that would improve the product, because it follows that the coarser the enamel is it will be of an inferior grade. 3

Q. Would that change have been practical with the old hand dredge? A. No, it would not.

Q. Why?

A. Because it would have put more work on the enameler, and he already had enough to do in driving the enamel through the coarser mesh, and to compel him to drive it through a 50 mesh cloth, he would have had to exert himself that much more.

Q. What would you say as to the value to the enameling business of this pneumatic dredger? 4

A. Well, from my knowledge of the business today, I would say that it is indispensable; in dollars and cents I could not compute it, because I am not familiar with the business today, but I will say this, that if I were to go into the business today, I would not attempt to do so unless I could use the pneumatic dredger or something equally as good.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. After you had invented the dredger, Mr. Arrott, you took out the patent for the invention in your own name?

A. Yes, sir.

Q. How long did you retain the patent as your own property?

A. Well, now, sir, I cannot remember the exact date of transfer.

Q. Give it approximately?

A. Well, I would say about 1905.

Q. Did you license the Standard Manufacturing Com-
2 pany to use the patent?

THE WITNESS: The old Standard Manufacturing Company?

Mr. GROSVENOR: Yes.

A. I did not.

Q. You gave them the free use of it, did you?

A. No, sir; not as I understand it.

Q. What arrangement did you have?

A. We had an arrangement that they were to compensate me for the invention, but we never had the transfer of any
3 papers authorizing them to use it.

Q. They used it, then, until the organization of the Standard Sanitary Manufacturing Company on January 1, 1900?

A. Yes, sir.

Q. Did you get anything for it up to that time?

A. No, sir.

Q. Then you stayed with the Standard Sanitary until how long? A. Until June of 1901.

Q. Six months? A. A year and six months.

Q. Did you get anything at that time? A. No, sir.

Q. Either by way of royalty or contract? A. No, sir.

4 Q. In June, 1901, you started, with your brothers, the United States Sanitary Manufacturing Company?

A. After that; yes, sir.

Q. About what time?

A. Well, I would say within two months; in August, 1901, we started to organize a company and build this plant at Monaca, Pennsylvania.

Q. How long did you stay with the United States Sanitary Manufacturing Company?

A. I stayed with them until 1903, I would say about February or March. I did not just quit at one day; it was a gradual dissolving of relationship. 1

Q. Was the United States Sanitary Manufacturing Company using the Arrott patent while you were there?

A. It was.

Q. Did you remain a stockholder? A. No, sir.

Q. Have they used the Arrott dredger continuously since that time? A. I believe so.

Q. You were not getting any royalty of any sort from either the Standard or the United States at that time?

A. No, sir. 2

Q. The question of what you should receive from the Standard was the subject of litigation between you and that Company?

A. Yes, between the Standard Sanitary Manufacturing Company and myself there was litigation.

Q. Were you the Plaintiff?

A. Yes, sir; if I am not mistaken. There may have been cross suits, but that was the principal one.

Q. As a result of that suit, how much money did you receive from the Standard for that patent?

THE WITNESS: From the Standard Sanitary Manufacturing Company? 3

MR. GROSVENOR: Yes.

A. I received $35,000.

Q. Did the United States Company pay you anything for the use of the patent?

A. Indirectly they did, but not for a license.

Q. You mean by employing you as an officer?

A. No, sir; after the litigation with the Standard Sanitary Manufacturing Company was arranged and settled and they had paid me, then the United States Sanitary Manufacturing Company paid me a sum voluntarily. 4

Q. For the use of the patent?

A. Well, they already had a license to use it.

Q. From whom did they obtain that license?

A. From me, while I was with them.

Q. Then, for this $35,000 you assigned your interests in the patent to the Standard Sanitary Manufacturing Company, is that right?

1 A. As far as money is concerned, that is right. There were other considerations.

Q. What others, for instance?

A. One was that they would drop all suits that they might intend to bring against my father's estate—

Q. (Interrupting): Well, I don't want to go into your personal affairs. This $35,000 was, in substance, what they paid you for the entire rights in the patent? A. Yes, sir.

Q. Did they then issue a new license to the United States Sanitary Manufacturing Company? A. Not that I know of.

Q. But the United States has continued to use it?

2 A. They have.

Q. Did you consider that $35,000 a fair value to be placed on the patent? A. No, sir.

Q. You considered it too little? A. Yes, sir.

Q. Were you present at any of the meetings during 1909 or 1910 that led up to the formation of this licensing arrangement with E. L. Wayman? A. No, sir.

Q. Did you know anything about it?

A. Except by hearsay.

Q. You talked with some of the persons interested?

A. I did.

3 Q. Name some of them?

A. I talked with Mr. Wayman, Mr. Cline, Mr. Torrance, Mr. Ahrens, my brother, Charles F. Arrott, and possibly some of the salesmen, just as I happened to meet them.

Q. This was in the latter part of 1909 or the early part of 1910? A. I would say the early part of 1910.

Q. What was the substance of your conversation with Mr. Ahrens?

A. The conversation I had with Mr. Ahrens was that I asked him the question what the object of this agreement was, whether it was to advance prices, and he said, No, it was not.

4 That was about all I said to him.

Q. Did you ask him any further questions?

A. No, I did not.

Q. Do you remember what month of 1910 that was?

A. That was five months ago; that was in October, after the directors' meeting in October, 1910.

Q. After the Government had instituted the suit?

A. I cannot say that.

Q. Are you a Director of the Standard? A. I am.

Q. Are you a Director of the United States Sanitary?

A. No, sir. 1

Q. Have you been present at most of the meetings of the Directors within the last year or two? A. Yes, sir.

Q. Was that assignment of the patent to Wayman authorized at any meeting of the Directors of the Standard?

A. No, sir.

Q. Was the subject mentioned, as far as you recall?

THE WITNESS: The assignment of the patent?

MR. GROSVENOR: Yes.

A. No, sir.

Q. Was the subject of the license arrangement mentioned 2
at any of the meetings? A. It was mentioned at one meeting.

Q. By whom?

A. If I remember correctly, Mr. Ahrens stated that any of the Directors who were not familiar with what was going on, if they would come back in the afternoon they would have a meeting of the Directors and explain the matter to them.

Q. When was that, April, 1910?

A. That was the meeting of April, 1910.

Q. This was at a meeting of the Directors? A. Yes, sir.

Q. And he said that if the Directors would come back in
the afternoon he would discuss the matter with them? 3

A. Yes, sir.

Q. Did he say anything further about it? A. No, sir.

Q. How did the subject come up?

A. Really, I could not explain how the subject came up.

Q. Is that the only meeting of Directors at which the matter was ever discussed, that is the licensing arrangement I am referring to?

A. That was the only meeting it was ever discussed, and I might say it was not discussed then.

Q. Or mentioned? A. It was simply mentioned.

Q. Now, what conversation did you have with Mr. Tor- 4
rance respecting this licensing arrangement? State when and the substance of it?

A. I cannot state when it was. I meet Mr. Torrance frequently, and always ask him how business is, and I may have asked him, "Well, how is this arrangement progressing?"

Q. When was this?

A. That might have been at any time during the last year, or more than once.

1 Q. When did you first hear of this arrangement, and from whom?

A. I could not say. I could not remember that particular part of it.

Q. Do you know how much the Standard has paid E. L. Wayman for the use of this Arrott patent since they assigned it to him? A. I do not.

Q. Doesn't the Board of Directors consider any such matters?

A. They did not. They were not given an opportunity.

Q. The Executive Committee of the Standard Sanitary
2 has practically direct and entire management of the Company, has it not?

A. Yes, sir; although several of the Directors are active in the operation of the different plants.

Q. By that you mean like Mr. Reed they are officials or employees? A. Yes, sir.

Q. But the Executive Committee, composed of Mr. Ahrens, Mr. Torrance, Mr. Dawes and Mr. Myler, has entire control of the policy; is that right? A. I believe so.

Q. What they say goes, in other words? A. Yes, sir.

Q. Are you familiar with the terms of the license arrange-
3 ment or agreement which the Standard entered into with Wayman? A. No, sir.

Q. Do you know that the Company assigned the patent for $10,000, and also agreed to pay him at a rate that amounts to between thirty and forty thousand dollars a year for the use of the patent? A. No, sir.

Q. That was handled by the Executive Committee, was it? A. I believe so.

Q. You have no position, either as Director or otherwise in the United States Company at this time? A. No, sir.

Q. Who is the active man in charge of the United States
4 Company?

THE WITNESS: Of the United States Company?

Mr. GROSVENOR: Yes.

A. A. H. Cline, Jr.

Q. What talk did you have with Mr. Cline about the agreement?

A. Well, I could not repeat any talk that I had. It would be very difficult.

Q. Did he say why he was going to?

A. I don't believe he told me why he was going into it, further than he thought it would be a good thing for the manufacturers and for the jobbers. 1

Q. Why would it be a good thing, did he state?

A. No, he did not; he did not.

Q. Did he say anything about the patent?

A. No, he did not, that I can remember.

Q. What did Wayman say about it? What talk did you ever have with him?

Mr. CHRISTY: Note that Mr. Christy objects to this line of examination, as whatever these parties may have said are not admissions or otherwise evidence in this case. 2

A. Well, most of my talk with Mr. Wayman was after this litigation came up. I met Mr. Noble, I believe it was, with Mr. Wayman, and they both talked to me about this patent, or rather about the use of the pneumatic dredger. They were after my ideas as to what use and what good it was.

Q. Your brother is President of the United States Company, Mr. Charles F. Arrott, is he not? A. I think he is.

Q. But the active management of the Company is left to A. H. Cline, is it not? A. Yes, that is my impression. 3

Q. Now, this Arrott dredger is a decided improvement upon the old hand dredge, is it not? A. It is.

Q. You were, however, under the hand dredge manufacturing merchantable sanitary ware, were you not?

A. Yes, sir.

Q. And the Standard Manufacturing Company at June 1, 1900, and after that the United States Sanitary Company and all these companies had an extensive business and trade in sanitary enameled ware which was manufactured by the hand dredge? Leave out the United States Company, because you testified that the United States used only the pneumatic dredger, but the Standard had a large and extensive trade in ware manufactured by the hand dredge, is not that right? A. That is correct. 4

Q. Now, when you said that in your judgment that Arrott dredger was indispensable, you meant, did you not, that in order to enable one manufacturer to compete successfully with another manufacturer in making and selling this ware, he ought to have the Arrott dredger; is not that right?

A. I believe he should.

1 Q. You did not mean to imply that it was impossible to make ware without the Arrott dredger?

A. No, sir; not absolutely.

Q. That is the Arrott dredger is economical?

A. Yes, sir.

Q. That is one of its characteristics? A. Yes, sir.

Q. It is useful and also valuable? A. Yes, sir.

Q. But in order to make ware it is not essential?

A. I believe it is to these concerns that I am familiar with, the Standard Sanitary Manufacturing Company and the United States Company.

2 Q. Why is it essential, if they could make ware without it, except as I have indicated, that it is economically useful?

A. What I mean is, if they were deprived of the use of the pneumatic dredger, they would have to re-organize their entire enameling plant.

Q. Did you have charge of the making of the enameling powder? A. Yes, sir.

Q. Do you consider that an important feature of the business? A. Quite important.

Q. It is very important? A. Yes, sir.

Q. It has required long years of study and development,

3 has it not? A. It has.

Q. If the Standard was deprived of the use of the formulas for making the powders and were prevented from making these enameling powders as they are making them today, would not that also very largely derange their business? A. I believe it would.

Q. Now, as to the slush coat; is not the making of the slush an important feature of the business?

A. Very important.

Q. That has perhaps changed more than any other feature of the business in the last fifteen years, has it not, that

4 is, in the application of the slush?

A. Not in the application, but in the composition.

Q. And in the firing? A. Yes, sir.

Q. Now, supposing the Standard Sanitary Manufacturing Company was deprived of the privilege and opportunity of making and firing the slush coat, as it does today, and it was relegated to the methods employed fifteen years ago, would that derange their business? A. That would stop it.

Q. It would stop it? A. Yes, sir.

Q. That is in the last fifteen years there have been great

developments in the business along other lines as well as in the application of the powder through the Arrott dredger? 1

A. Yes, sir.

Q. Have you a copy of the agreement between yourself and the Standard, under which the Standard paid you that $35,000? A. I believe I have; I should have.

Q. Will you permit counsel to let me see it at the next hearing? A. Yes.

Q. Can you give me an opinion as to the value of the Arrott patent in the business today, or has the fact that you have not been actively engaged within the last seven years in the business prevented you from acquiring an opinion of its value today, I mean in dollars and cents? 2

THE WITNESS: I don't think I could place a value on it. You mean to the entire enameling business throughout the country?

Mr. GROSVENOR: Yes, what would you consider it worth today, if you controlled it today?

Mr. CHRISTY: Objected to as merely calling for speculation.

A. I haven't any idea.

RE-DIRECT EXAMINATION BY Mr. CHRISTY: 3

Q. In order to make plain some matters spoken of on cross examination, I want to ask you a few questions about your settlements with the Standard Sanitary Manufacturing Company and the United States Company. You referred, in answer to one of Mr. Grosvenor's questions, to a further consideration above the sum paid you by the Standard, in respect to quieting possible litigation between the Standard and your father's estate. If that had directly to do with this dredger, I wish you would explain what you had in mind?

A. It had to do with this dredger and this settlement for this reason: That I was a stockholder in the Standard Sanitary, and my father's estate, of which I am one of the Trustees, was the largest individual stockholder of the Standard Sanitary Manufacturing Company. While I believe I was entitled to the consideration which I got, yet I was friendly with the officers of the Standard Sanitary Manufacturing Company, and that had a bearing on the settlement. I wished to have it closed up, and I accepted what they offered me. 4

Q. And one other point; it was also true, was it not, that the Standard Sanitary Manufacturing Company considered that the former principal owners of the Standard Manufacturing Company, that is, your father and Mr. Torrance, should bear the expense of this settlement with you, and the litigation which you wished to avoid was their insisting upon that point as against your father's estate?

A. That is correct.

Q. Now, as to the United States Company, the license which you gave them was a license merely to the partnership as it then existed, and not transferable to any successor?

A. That is correct.

Q. And when you made your settlement with the Standard, you expressly reserved and notified them of the license which you had given to this partnership?

A. I believe that is correct.

Q. You said, in answer to one of Mr. Grosvenor's questions, as I understood it, that after the organization of the Standard Manufacturing Company it still did a large business in articles enameled by the hand dredge? You meant by that before the Arrott dredger was put in, is not that correct?

A. Yes, I referred to the time before the pneumatic dredger was put in.

Q. Although, as you have testified, the composition of the enamels and slush coats are matters of importance in the enameling business, does that in any way affect your testimony and your views as to the value of the pneumatic dredger? A. No, sir.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. Going back to that $35,000, was that paid in part for your covenant not to continue in the business? A. No, sir.

Q. It was entirely for the Arrott patent? A. Yes, sir.

Q. Your license to the United States Company, then, was a personal license to the partnership, was it? A. It was.

Q. And terminated when? A. I couldn't say.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of evidence was then adjourned subject to notice of next hearing.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Philadelphia, Pa., 2

April 4, 1911.

Pursuant to notice, the taking of evidence on behalf of the Defendants was resumed at the Federal Building, in Philadelphia, Pa., on this 4th day of April, 1911, at 10:30 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq., 3
ROBERT B. HONEYMAN, Esq.,
on behalf of the Defendants.

MAX GOEBEL, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Goebel, state your residence and occupation?

Mr. GROSVENOR: Mr. Goebel, I want to make a few 4
remarks to you before you answer any questions. Mr. Goebel, as counsel for the Government I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce,

such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the Grand Jury of Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both in the discretion of the Court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint, are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably

will tend to incriminate you and may be used against 1
you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advice you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these 2
matters by any of the counsel for the defendants.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation, in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the 3
Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th amendment you may refuse to answer every question upon these matters, whether addressed to you 4
by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants,—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must

compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted in Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: Yes.

Mr. NOBLE: Just note that that answer was given in response to a question asked by counsel for the Government and under direction of counsel for the Government.

BY Mr. HONEYMAN:

Q. Now, Mr. Goebel, will you tell us where you live and your occupation?

A. I reside at 190 Berkeley Street, Brooklyn.

Q. And your occupation?

A. I am Secretary of the J. L. Mott Iron Works.

Q. Is that a corporation? A. It is.

Q. How long have you been Secretary of the J. L. Mott Iron Works? A. For about fifteen years and upwards.

Q. You are one of the Defendants in this Bill in Equity brought in the United States Circuit Court for the District of Maryland, by the United States of America, against the Standard Sanitary Manufacturing Company, the J. L. Mott Works and others? A. Yes.

Q. And, as stated by the Assistant Attorney-General, you are one of the Defendants in the Indictment at Detroit?

A. Yes, sir.

Q. What is the business of the J. L. Mott Iron Works?

A. It is selling plumbing materials, heating goods, fountains, vases, wrought iron goods and the selling and setting of tiles, also ranges and heaters. 1

Q. Where is their place of business?

A. At 118-120 Fifth Avenue, New York.

Q. Is the J. L. Mott Iron Works engaged in the manufacture of sanitary enameled iron ware?

A. It is not so directly engaged.

Q. The J. L. Mott Iron Works that you are Secrtary of, and whose business you have just described, is a New York corporation, is it not? A. It is.

Q. Is there a New Jersey corporation of the same name? 2

A. Of a similar name; yes, sir.

Q. Is the New Jersey corporation engaged in the manufacture of sanitary enameled iron ware, so far as you know?

A. I think it is.

Q. But that is a different company from the one that you have described? A. It is.

Q. Do you know the Colwell Lead Company? A. I do.

Q. What do you know about them, in a general way, their business and so on?

A. They are doing a similar business that we do and they are competitors of the J. L. Mott Iron Works. 3

Q. They do not deal in stoves and ranges and wrought iron goods, do they? A. No, sir.

Q. They are competitors of yours in what respect?

A. They are competitors in the plumbing fixture line.

Q. But only in the plumbing fixture line are they competitors? A. Yes, sir.

By Mr. Noble:

Q. In the plumbing fixture line do you include sanitary enameled iron ware?

A. I include sanitary enameled iron ware. 4

By Mr. Honeyman:

Q. How long have you known of the Colwell Lead Company as a competitor?

A. For a great number of years I have known that. I cannot give you the exact number of years, but a long time.

Q. Do you know whether their trade is with the jobbers or plumbers?

A. They sell to the plumbers, the same as we do.

1 Q. Do you know whether their trade is with the jobbers
A. I don't know. I have not heard.
Q. Would you know if they sold to jobbers to a great extent? A. I would, yes.
Q. Do they sell to jobbers to any extent?
A. I don't think so.
Q. Do you know of their selling to jobbers at all?
A. I don't know that of my own knowledge, but they sell to the plumbers just the same as we do.
Q. You never heard of their selling to jobbers?
A. I never heard of their selling to jobbers, no.
2 Q. Do you know where the business of the Colwell Lead Company is, in what locality?
A. Downtown New York; it used to be on Centre Street.
Q. And now it is at Lafayette and Walker Streets, is it not? A. Yes, sir.
Q. Is their business a local business, or do they do business throughout the United States?
A. Their business is merely local, as far as I know.
Q. Did you ever have any conversation with Dr. Duryea or Mr. Tilden, or anyone connected with or representing the Colwell Lead Company, with respect to any patent known
3 as the Arrott patent, used in the manufacture of enameled iron ware? A. I never had.
Q. Were you ever at any meeting where the Colwell Lead Company was represented directly or indirectly, or where the Arrott patent was under discussion in any way?
A. I never was.
Q. Did you ever have any contract or agreement of any kind or description with the Colwell Lead Company on the matter of prices? A. I never did.
Q. Or the J. L. Mott Iron Works, to your knowledge?
A Not to my knowledge,
4 Q. Do you know whether or not the Colwell Lead Company maintained the same prices on sanitary enameled iron ware in the months of May, June and July, 1910, as your Company did?
A. It has been repeatedly reported to me—

Mr. Grosvenor: I object to that as hearsay.

The Witness (continuing): It has been repeatedly reported to me that the Colwell Lead Company was underselling the J. L. Mott Iron Works.

Q. Who reported it to you? A. Salesmen. 1

Q Whose salesmen?

A. Salesmen of the J. L. Mott Iron Works.

Q. Were those reports made to you in the ordinary course of the business of your Company? A. Yes, sir.

Q. Did you ever see this license agreement of Wayman's for these Arrott patent, reported to have been made with the J. L. Mott Iron Works, and set forth in the bill of complaint here? A. I decline to answer.

Q. On what ground do you decline to answer?

A. On the ground that it might tend to incriminate me and in taking the advice of counsel for the Government. 2

Q. That is, you are taking the advice of the Assistant Attorney General?

A. Taking the advice of the Assistant Attorney General.

Mr. HONEYMAN: The Colwell Lead Company has no further questions to ask this witness.

QUESTIONS BY Mr. NOBLE, COUNSEL FOR THE WITNESS:

BY Mr. NOBLE:

Q. In this suit in Baltimore concerning which the counsel for the Government spoke, and as to which Mr. Honeyman 3 also asked you some questions, did you make an answer, and did the J. L. Mott Iron Works also make an answer to that suit?

A. Yes, sir.

Q. Was that answer made under oath? A. It was.

Q. Do you recall the day that you verified it?

A. Yes, sir; it was the 30th of September, 1910.

Q. Are the matters and things referred to in the petition filed by the Government in the civil suit in Baltimore, alleged to be breaches of the law, and the matters and things referred to in the indictments filed at Detroit, on or about December 4 7, 1910, substantially the same thing? A. I think they are.

Q. Were you subpœnaed in the suit in Baltimore to make answer in that case? A. Now, I have been subpœnaed, yes.

Mr. GROSVENOR: I object to that term "subpœnaed."

Q. You were subpœnaed to come here today? A. I was.

Q. On whose behalf were you subpœnaed?

A. By the Colwell Lead Company.

LLOYD G. McCRUM, a witness of competent age, produced on behalf of the Defendants, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Mr. McCrum, state your residence and occupation, please?

Mr. GROSVENOR: Now, before you answer, Mr. McCrum, there are certain things I want to say to you. As counsel for the Government I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by section 4 of the Sherman anti-trust act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the eastern district of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy, to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both in the discretion of the court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting

which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government, and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf,—and I understand you are now

called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment you may refuse to answer every question upon these matters, whether addressed to you by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: Well, will I be allowed to confer with my personal counsel regarding it? I think I understand it.

Mr. GROSVENOR: Your personal counsel of record in this case is Mr. Noble. Do you wish to consult other counsel?

Mr. HILLARY C. MESSIMER: I wish to note my appearance for the McCrum-Howell Company, Mr. McCrum and Mr. Gates.

The witness then conferred with counsel.

THE WITNESS: I think I understand it, now.

Mr. NOBLE: Note that the answer of the witness is given in reply to the Government's question.

Mr. HONEYMAN: I desire to object on the record 1
most strenuously to counsel for the Government, either directly or indirectly coercing or threatening or seeking to influence a witness duly subpœnaed by the Colwell Lead Company in a proper effort to establish its non-participation in the alleged acts of conspiracy set forth in the Bill of Complaint in this case and seeking to establish the falsity of the allegations of the Bill of Complaint, so far as this defendant, the Colwell Lead Company, is concerned. On behalf of the Colwell Lead Company, I aver the impropriety of the Government's seeking to interfere with the rights 2
of a defendant to establish its case by advising a witness not to answer. It is not the proper function of the Government to advise witnesses called in behalf of the Defendants.

Mr. GROSVENOR: Counsel for the Government states that he advises the witness neither way. I think that counsel for the Colwell Lead Company will so observe if he reads my statement.

Mr. HONEYMAN: Counsel for the Government did advise the witness to refuse to answer.

Mr. GROSVENOR: No, the only purpose of my state- 3
ment was to advise the witness of the position that the Government takes in this matter. I want him to fully understand the position of the Government and our attitude in this case. After he understands it, he is at liberty to answer or not, as he sees fit. I thought it was proper to state to him an interpretation of the law, that is, our interpretation of what we consider the law to be, and the witness is now at liberty to answer the questions if he so desires to do, but I want him to remember that my remarks were not in the nature of advice at all. 4

Mr. HONEYMAN: The Government may think it proper, so far as the Government and the witness is concerned, but so far as the defendant, the Colwell Lead Company is concerned, it is grossly improper to advise or instruct the witnesses not to answer or in the way to answer, which would be satisfactory to the Government. It partakes of coercion and undue influence on the part of the Government in interfering with the trial of the case by the defendant.

Mr. GROSVENOR: I simply endeavored to tell the witness how we interpret the law in case he should decide to answer the question.

BY Mr. HONEYMAN:

Q. Will you state your residence and occupation?

A. New York City is my residence. I am President of the McCrum-Howell Company.

Q. What is the business of the McCrum-Howell Company?

A. Boilers, radiators, cleaning machines and sanitary enameled iron ware.

Q. Where is your factory? A. We have five factories.

Q. Are you engaged in the jobbing of plumbing supplies?

A. No, sir; we sell to the jobbers.

Q. You do not sell to the plumbers, do you? A. No, sir.

Q. Do you know the Colwell Lead Company?

A. Yes, sir.

Q. What is their business?

A. Manufacturers of sanitary enameled iron ware.

Q. Do you know whether they sell direct to the plumbers?

A. They do sell direct to the plumbers.

Q. Do you know whether or not they sell to jobbers?

A. My understanding is that they do not.

Q. Do they buy sanitary enameled iron ware from the McCrum-Howell Company? A. Occasionally.

Q. Haven't they frequently bought from your Company during the last two or three years?

A. Our Mr. Gates could answer that better. He keeps in closer touch than I do with that, and he is here.

Q. Do you know whether or not they have bought in the past? A. Yes, sir; they have.

Q. You are one of the defendants under this Bill of Equity filed by the United States versus the Standard Sanitary Manufacturing Company and others? A. Yes, sir.

Q. And your Company, the McCrum-Howell Company, is a defendant? A. Yes, sir.

Q. And, as stated by the counsel for the Government, you are a defendant in the Indictment in Detroit? A. Yes, sir.

Q. You are subpœnaed to appear here this morning?

A. Yes, sir.

Q. By whom?

A. A United States Marshal subpœnaed me at my office.

Q. In behalf of the Colwell Lead Company? A. Yes, sir.

Q. Does your Company ever come in competition with the Colwell Lead Company in making sales to jobbers? 1

A. Not that I know of.

Q. If it did, would you know of it?

A. Yes, sir; there might be instances that I would not know of, but as a general proposition I would know of it.

Q. You do not know of any instance where they have come in competition with you in sales to the jobbers, do you?

A. No, sir.

Q. Prior to the filing of this Bill in Equity, had you ever talked to the Colwell Lead Company or any of its officers or representatives with reference to the Arrott patent? 2

A. No, sir.

Q. Have you met Dr. Duryea or Mr. Tilden?

A. I have met Dr. Duryea, but I don't know Mr. Tilden.

Q. Have you ever talked with anyone connected with the Colwell Lead Company with reference to the Arrott patent?

A. No, sir.

Q. Were you present at a meeting of certain manufacturers of sanitary enameled iron ware at Chicago, on or about March 2, 1910? A. Yes, sir.

Q. Was Mr. Wayman present at that meeting?

A. Yes, sir. 3

Q. Was anyone present at that time representing the Colwell Lead Company, as far as you know? A. No, sir.

Q. Was Dr. Duryea present? A. No, sir.

Q. And Mr. Tilden was not present, as far as you know?

A. No, sir.

Q. Did you at that meeting discuss with anyone the possibility of getting together under a license agreement under the Arrott patent?

Mr. GROSVENOR: I particularly object, because the witness has testified that the Colwell Lead Company was not represented at that meeting, and I cannot see why counsel should persist in asking what was done at that meeting, the record showing that was one of the unlawful meetings which resulted in this license arrangement which was the basis of this suit. 4

Mr. NOBLE: Counsel objects to the characterization of the meeting in Chicago as an "unlawful" meeting.

Mr. GROSVENOR: Strike out the word "unlawful."

Mr. MESSIMER: Counsel for the McCrum-Howell

1 Company and the witness instructs the witness that in view of the statement made by counsel for the Government in the commencement of his testimony, he may, if his answer to this question would tend to incriminate him, decline to answer the same until the matter has been passed upon by the court.

THE WITNESS: I decline to answer on the advice of counsel and on the further ground that it would tend to incriminate me, until the question has been passed upon by the Court.

BY Mr. HONEYMAN:

2 Q. Do you decline to answer on the advice of your personal counsel, or on the advice of counsel for the Government? A. On the advice of my personal counsel.

Q. Was there any discussion at that meeting with reference to the Colwell Lead Company joining the other manufacturers in an arrangement to take uniform licenses under the Arrott or any other patent?

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness gives the witness the same instructions.

3 THE WITNESS: I decline to answer for the same reasons I have stated.

Mr. GROSVENOR: Counsel for the Government objects to the question as being immaterial and irrelevant and not competent as to the Colwell Lead Company. What these others were going to do in respect to the Colwell Lead Company, the Colwell Lead Company not being represented at the meeting, as testified to by the witness, is immaterial and irrelevant.

BY Mr. HONEYMAN:

4 Q. Was it stated by Mr. Wayman at that meeting that he had any understanding or arangement with the Colwell Lead Company with respect to any licenses under the Arrott or other patents?

Mr. GROSVENOR: I object to that question also as being incompetent, immaterial and irrelevant and not binding upon the Colwell Lead Company in any event, whatever Wayman may have said as to his intentions at that time.

THE WITNESS: Am I to answer that? 1

Mr. MESSIMER: Yes.

THE WITNESS: Will you read the question, I have forgotten it.

Mr. GROSVENOR: I do not want to advise the witness too much about his rights, but you do not have to rely on your own counsel. In this question of incrimination, the witness does as he pleases.

THE WITNESS: I hardly know where to get my advice.

Mr. GROSVENOR: You do not have to wait for counsel or anybody else to advise you. 2

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects very strenuously to the counsel for the United States Government interfering with the defendant's witnesses and the conduct of the defendant's case. This is none of the business of the counsel for the Government.

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness suggests that he will protect the witness and that the Government need not feel called upon to do anything in addition.

THE WITNESS: I would like to have the question re- 3
peated.

The stenographer then read the last question.

A. It was not.

BY Mr. HONEYMAN:

Q. Counsel for the Colwell Lead Company gives notice that he will take steps to compel the witness to answer the questions which he has declined to answer. I insist upon that.

Mr. GROSVENOR: Of course, that will have to be done this week. The time for the taking of testimony 4
expires this week.

Mr. MESSIMER: Counsel for the McCrum-Howell Company suggests that the record be immediately certified to the Court in order that this question may be immediately passed upon. It is possible that an arrangement can be made with some one of the Federal judges here in the building to determine this question. Counsel objects to detaining this witness under subpœna for any indefinite period while this matter is

1 brought up in some other circuit or district than the one in which the witness has been subpœnaed.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE:

Q. Mr. McCrum, the counsel for the Government has spoken of the suit which is pending in the Circuit Court for the District of Maryland, and also the indictments pending in Detroit, found by the Grand Jury there, about December 7, 1910. I ask you if the matters and things complained of as being illegal in that civil suit and also in the indictments
2 referred to, are substantially the same matters and things?

A. Yes, sir; they are.

Q. Did you make answer to the civil suit pending in Baltimore pursuant to a subpœna issued in that case?

Mr. GROSVENOR: I object to the question unless it means the answer that was filed in response to the bill of complaint and the subpœna in chancery served upon the witness after the filing of the bill of complaint.

Mr. NOBLE: I will make that clear. Just answer that question.

A. I really do not feel competent to answer it. I have
3 seen so many papers in this case, you know.

Q. Did you make a verified answer in this case?

A. Yes, sir.

Q. That was made in response to the petition filed in Baltimore? A. Yes, sir.

Q. And you did that in response to the subpœna or process served on you in that case? A. Yes, sir.

Q. What was the date upon which you swore to the Answer in the suit in Baltimore?

A. The thirtieth day of September, 1910.

Q. That was the answer you before referred to as being
4 the verified answer filed by you in response to the petition of the Government in Baltimore? A. Yes, sir.

Mr. NOBLE: I am finished now with this witness, but I may call this witness at some other time in reference to his own case.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

HOWARD T. GATES, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Gates, state where you reside and your occupation, please?

Mr. GROSVENOR: Before you answer that, Mr. Gates, I want to state certain things to you.

Mr. MESSIMER: Couldn't you ask him if he heard you read it to the other witnesses? 2

Mr. GROSVENOR: No, I do not want there to be any question about the witness understanding just what the Government regards as the law. This is not given in the way of advising you, Mr. Gates, as to what you shall do as to answering the questions, but I wish to state the Government's interpretation of the law in order that there may not be any possibility hereafter of its being stated that the witness did not understand the position of the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects to the counsel advising the witness in such a way as he did the last witness and in such a way as to keep him from answering proper questions put to him by the Colwell Lead Company. It is unfair for the Government to prevent the defendant from establishing its defense in this suit which was brought by the Government. 3

Mr. GROSVENOR: Mr. Gates, as counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by section 4 of the Sherman anti-trust act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall 4

be upon a conviction of a violation of its provsions. This punishment in a criminal case may be a fine or imprisonment or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the eastern district of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both, in the discretion of the Court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the Defendants in disproof, of the allegations of the Bill of Complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects

you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel. 1

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk. 2

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment, you may refuse to answer every question upon these matters, whether addressed to you by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer. 3 4

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself

to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: I do.

Mr. NOBLE: Note that that question is asked by the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to note the same objection to this statement of counsel for the Government as was noted to a similar statement made by counsel for the Government when counsel for the Colwell Lead Company attempted to interrogate the witness, Mr. McCrum. Counsel considers the action of counsel for the Government as being improper and as attempting to interfere with the defendant in establishing its case.

BY Mr. HONEYMAN:

Q. Will you state your residence and occupation?

A. Pleasantville, New York, Secretary of the McCrum-Howell Company.

Q. The McCrum-Howell Company and yourself are defendants in this equity suit brought in Maryland by the United States Government against the Standard Sanitary Manufacturing Company and other defendants? A. Yes, sir.

Q. And as stated by counsel for the Government, you and your Company are also defendants in the criminal proceedings in Detroit? A. Yes, sir.

Q. What is the business of your Company, please?

A. Manufacturers of boilers, radiators, sanitary enameled ware and vacuum cleaning machines.

Q. Do you sell to the plumbers direct? A. No, sir.

Q. Do you know the Colwell Lead Company? A. Yes, sir.

Q. How long have you known them in a business way?

A. About eight years.

Q. Are you acquainted personally with Dr. Duryea?

A. Yes, sir.

Q. And with Mr. Tilden? A. No, sir.

Q. Dr. Duryea is President of the Colwell Lead Company?

A. Yes, sir. 1

Q. Are they competitors of yours in sanitary enameled iron ware?

A. I should say no. They sell to a different class of trade.

Q. What is their trade?

A. They sell direct to the plumbers. We sell to the jobbers.

Q. Does the Colwell Lead Company, to your knowledge, sell generally throughout the United States to jobbers of plumbing supplies? A. They do not.

Q. Is it not a fact that their business is a local business in New York City to the plumbers? 2

A. I should say their principal business is.

Q. Were you present at a certain meeting of the representatives of certain manufacturers of enameled iron ware held at the Hotel Astor, in New York City, on or about the thirtieth of March, 1910? A. I was.

Q. Was Mr. Wayman present at that meeting?

A. He was.

Q. Was Dr. Duryea present at that meeting?

A. I don't think he was.

Q. Was there any representative of the Colwell Lead Company present at that meeting, so far as you know? 3

A. Not to my knowledge.

Q. Were you present at any meetings of the representatives of enameled iron ware manufacturers held at Mt. Clemens, Michigan, during the month of April, 1910?

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness, instructs the witness that in view of the statement made by counsel for the Government, if his answer to this question would tend to incriminate him, he may decline to answer it until the matter has been passed upon by the court. 4

THE WITNESS: Acting upon the advice of my counsel, and on the ground that my answer might tend to incriminate me, I decline to answer until the matter has been passed upon by the court.

BY Mr. HONEYMAN:

Q. Was the Arrott or any other patent used in the manufacture of enameled iron ware discussed at any of those meetings at Mt. Clemens?

1 Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness gives the witness the same advice.

THE WITNESS: I make the same answer.

Mr. GROSVENOR: And counsel for Government objects on the ground that he does not see how this question is in any way relevant to the case of the Colwell Lead Company.

Mr. HONEYMAN: Counsel for the Colwell Lead Company thinks that counsel for the Government is assuming that there was a conspiracy entered into at
2 these meetings. Counsel for the Colwell Lead Company thinks that there was no conspiracy or arrangement entered into at any of those meetings and he thinks he can show that fact in denial of the allegations in the Bill of Complaint. Naturally, if there was no conspiracy, then it could not be extended to or adopted afterward by the Colwell Lead Company.

Q. At any of those meetings, was there any proposition considered or discussed between manufacturers for taking uniform licenses under the Arrott or any other patent?

3 Mr. MESSIMER: I give the same advice to the witness.

THE WITNESS: I make the same answer.

Q. Were you present at any time at any meeting at Mt. Clemens, during the month of April, 1910, where Dr. Duryea or any representative of the Colwell Lead Company was present?

Mr. MESSIMER: Same instruction and advice to the witness.

THE WITNESS: Same answer.

Mr. HONEYMAN: Counsel for the Colwell Lead Company gives notice that he will take steps to compel the
4 witness to answer these questions, as he considers them essential in the conduct of his case, and reserving that right, he is finished with the witness at present.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS:

BY Mr. NOBLE:

Q. Are you here under a subpœna? A. I am.

Q. At whose request was that subpœna served on you?

A. The Colwell Lead Company.

Q. Counsel for the Government in his statement has called attention to the fact that there was a bill pending against you and other defendants in the Circuit Court of the United States for the District of Maryland, and that there were certain indictments found on or about the 7th of December, 1910, at Detroit, against you and other defendants, substantially the same in both cases. I ask if the matters, transactions and things complained of in the suit in Baltimore, in which the Government filed the petition referred to, and the indictments found in Detroit, just mentioned, are substantially the same? A. Yes. 1

Q. And you are a defendant to the suit in Baltimore and also to the indictments in Detroit just mentioned? 2

A. Yes, sir.

Q. Did you make an answer to the petition filed in Baltimore in the Circuit Court for the District of Maryland?

A. Yes, sir.

Q. Was your answer filed in that case? A. Yes, sir.

Q. Was that a verified answer? A. Yes, sir.

Q. Will you please state what date you made the verification to that answer?

A. The thirtieth day of September, 1910.

Q. Did you make that answer pursuant to a subpœna served upon you in that suit by the Circuit Court for the District of Maryland? A. Yes, sir. 3

Mr. NOBLE: That is all. I may call this witness later in his own defense.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: I shall have some more witnesses here at two o'clock. In the meantime, I desire to find out if I can have these questions certified to court here. 4

At this point a recess was taken until 2 o'clock.

After Recess.

FRANCIS J. TORRANCE, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Torrance, you are subpœnaed as a witness on behalf of the Colwell Lead Company?

Mr. GROSVENOR: Before you answer any questions, Mr. Torrance, there are certain things which I wish to say to you.

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects to counsel for the Government pursuing the policy which he adopted at the morning session, in reference to instructing witnesses subpœnaed by the Colwell Lead Company. The action of the Government virtually threatening and intimidating witnesses of the Colwell Lead Company is grossly improper and uncalled for. The witnesses are protected by their own counsel and do not need the protection of counsel for the Government. We think it is unjust, unfair and wrong for counsel for the Government to interfere with our defense.

Mr. GROSVENOR: My remarks are addressed to the witness merely for the purpose of explaining to him the position of the Government in this matter, and not in any way to instruct him what he should do, but simply to explain our position.

Mr. Torrance, as counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation

of its provision. This punishment in a criminal case 1
may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body, at Detroit, Michigan, December 7, 1910, or about that date, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary 2
enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under Sections One and Two of the Sherman Act, you are liable to punishment by fine or imprisonment, or both, in the discretion of the court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the 3
defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in 4
each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you

from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel.

If however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government, and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf,—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment, you may refuse to answer every question upon these matters, whether addressed to you by your own counsel or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists, that you answer, I advise you that if you desire to avail yourself of your constitutional privilege and refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Govern-

ment at the close of the direct examination, if he should decide to cross examine you. 1

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decided to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: I do.

Mr. NOBLE: Please note that that question was responded to at the request of the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to give notice to counsel for the Government that he is interfering with the orderly conduct of the Colwell Lead Company, in proving its defense, and is delaying and interfering seriously with the defense of the Colwell Lead Company. The attitude which the Government has taken makes it necessary for counsel for the Colwell Lead Company to apply to the court for relief and also for an extension of time in which the Colwell Lead Company may conclude its case. I also wish to state that counsel for the Government, in stating his position to the witness, excludes from his mind any fairness toward counsel for the Colwell Lead Company, who is now seeking to establish its defense. 2 3

BY Mr. HONEYMAN:

Q. Now, Mr. Torrance, you were subpœnaed to appear here in behalf of the Colwell Lead Company, one of the defendants in this proceeding? A. I was.

Q. What is your residence and business, please?

A. Pittsburg.

Q. And your business?

A. Vice-President of the Standard Sanitary Manufacturing Company. 4

Q. The Standard Sanitary Manufacturing Company and yourself are defendants in this suit in equity brought in the United States Circuit Court for the District of Maryland by the United States of America against the Standard Sanitary Manufacturing Company and others? A. Yes.

Q. You and your Company are also defendants in certain criminal proceedings brought by the United States of America in Detroit, Michigan? A. Yes, sir.

Q. How long have you been Vice-President of the Standard Sanitary Manufacturing Company? A. Eleven years.

Q. What is the business of your Company?

A. Manufacturers of sanitary enameled ware.

Q. Do you know the Colwell Lead Company?

A. Yes, sir.

Q. How long have you known of that concern?

A. Twenty years.

Q. Do you know their business? A. Yes, sir.

Q. What is it? A. Plumbing sanitary goods.

Q. Plumbing and sanitary goods?

A. Plumbing and sanitary goods; that is the common term of the business.

Q. Are they jobbers, do they sell to the plumbers?

A. They do.

Q. Do you know whether or not they sell to jobbers?

A. That I don't know.

Q. Haven't you any general knowledge on that subject?

A. They buy from us; they are customers of ours.

Q. Do you know as a matter of general knowledge whether or not they sell to jobbers?

Mr. GROSVENOR: The witness has testified in response to the first question as to that.

Mr. HONEYMAN: The witness is asked now whether or not he knows, as a matter of general knowledge in the trade, whether or not the Colwell Lead Company sells to plumbers or jobbers?

A. I know they sell to plumbers; I don't know of their sales to jobbers.

Q. You say they are customers of yours? A. Yes, sir.

Q. Do they compete with you in the sale of sanitary enameled iron ware? A. No, sir; not that I know of.

Q. You would be liable to know it if they did, wouldn't you? A. Yes, sir.

Q. Where is the business of the Colwell Lead Company?

A. New York City.

Q. Do you know whether or not they sell generally throughout the United States, sanitary enameled iron ware?

A. I do not.

Q. Do you think you would know it if they did?

A. Well, my knowledge of the trade generally is pretty good. I have not run across them as competitors.

Q. Are you acquainted with Dr. Duryea? A. Yes, sir. 1

Q. And Mr. Tilden? A. Yes, sir.

Q. Dr. Duryea is President and Mr. Tilden is Secretary of the Colwell Lead Company?

A. I don't know Mr. Tilden's office. I know Dr. Duryea is President of the Company.

Q. You know that Mr. Tilden is connected with the Colwell Lead Company? A. Yes, sir.

Q. How long have you been acquainted with Dr. Duryea?

A. I think eight or ten years.

Q. Your Company was the owner of the Arrott patent in July and August, 1909? A. Yes, sir. 2

Q. Do you recall any correspondence with the Colwell Lead Company respecting the Arrott patent about July, 1909?

A. I remember the correspondence, but I don't know the details of it. I remember correspondence relative to the use of the patent.

Q. The use of the patent by the Colwell Lead Company?

A. Yes, sir.

Q. Do you know whether your Company authorized its use by the Colwell Lead Company about July, 1909?

A. The matter was in the hands of our general manager, 3 being a manufacturing question, the correspondence to the best of my knowledge was all turned over to that department.

Q. Do you know whether or not your manager authorized the Colwell Lead Company to use the Arrott patent about July, 1909?

A. I could not testify of my own knowledge or acquaintance with the subject.

Q. But you do know of your own knowledge that there was some correspondence of that kind?

A. Yes, considerable.

Q. Do you know whether or not the Colwell Lead Com- 4 pany did install the Arrott device in the summer of 1909?

A. I am not positive, but my recollection is that they did.

Q. You were subpœnaed to produce that correspondence, were you not, Mr. Torrance? A. I was, yes, sir.

Q. Have you produced it?

A. I was served with the subpœna by the marshal here in the City, and of course I did not have the correspondence here.

Q. Were you present Mr. Torrance, at any meetings of

manufacturers of sanitary enameled iron ware, at Mt. Clemens, Michigan, in the spring of 1910?

THE WITNESS: I decline to answer that question in view of the statement made by Mr. Grosvenor, the Government's counsel.

Q. Is that the reason for your declination, the statement made by counsel for the Government?

A. Yes, that and the fact that I did furnish testimony in this case and was indicted. I was under the impression that if I furnished the evidence in the equity suit that I would not be subject to any further penalty or annoyance in the matter.

Q. When did you furnish evidence in the equity suit?

A. I filed an answer in response to a subpœna of the Government either in July or August of the past year. It was September 30, I filed my answer. I thought it was in August.

Q. Was it 1910?

A. Yes, sir; September 30, 1910.

Q. You considered that giving evidence, the filing of a verified answer?

Mr. GROSVENOR: I object to that as an opinion of law. It has been decided by the court that it is not. The question is, therefore, clearly incompetent and irrelevant.

Mr. HONEYMAN: I insist on an answer to the question.

THE WITNESS: I was told at the time I filed the answer—

Q. You were told what?

Mr. GROSVENOR: I object to that as hearsay. It does not indicate who said it, and besides it is immaterial and is hearsay. What his counsel may have said is absolutely immaterial, of course.

BY Mr. HONEYMAN:

Q. You were told what, and by whom, Mr. Torrance?

A. I was told by counsel in the case that I should file the answer and I was required to file it.

Q. That is one of the reasons why you decline to answer my question? A. Yes, sir.

Q. Did you at any time discuss with Dr. Duryea or any

representative of the Colwell Lead Company any matters relating to the Arrott patent, excluding from your answer what you have already testified to about some correspondence between your Company and the Colwell Lead Company in July, 1909? 1

Mr. NOBLE: Will you read that over again?

(The stenographer then read the last question.)

THE WITNESS: I decline to answer that question in view of the statement of Government's counsel.

Q. Do you know whether or not Dr. Duryea was present at any meeting of the manufacturers of enameled iron ware in the spring of 1910, at which you were present? 2

THE WITNESS: I decline to answer that also.

Q. You decline to answer these questions for the same reason that you have heretofore given? A. In each instance.

Q. Did you ever have any conversation with Dr. Duryea on the subject of uniform licenses from Wayman for the Arrott or any other patents concerned in the manufacture of enameled iron ware?

THE WITNESS: I decline to answer that also.

Mr. HONEYMAN: In view of the witness' refusal to answer questions which are material to the defense of the Colwell Lead Company, counsel now gives notice that he will make application to the court to compel the witness to answer; also that he will be obliged to make an application for extension of time until after the witness can be compelled to answer these questions, the interference now being on the part of the Government. Counsel declines to continue the examination of this witness further until he can take proper steps to compel the answers. 3

4

QUESTIONS BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE:

Q. Mr. Torrance, are you and your Company defendants in the civil suit filed in the Circuit Court of the United States for the District of Maryland? A. Yes, sir.

Q. Are you also defendants in the indictment filed in Detroit, filed about December 7, 1910? Yes, sir.

Q. Are the matters, transactions and things alleged to be

unlawful in the petition, and likewise alleged to be unlawful in the indictments, substantially the same? A. I believe so.

Q. The answer you verified on the thirtieth day of September, 1910, was thereafter filed as your answer in the suit in Baltimore? A. Yes, sir.

Mr. NOBLE: I may call this witness again in his own defense and in defense of the rights of his Company, but that is all for the present.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

THEODORE AHRENS, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Ahrens, will you state your residence and occupation?

Mr. GROSVENOR: Mr. Ahrens, there are certain things that I wish to say to you before you answer any questions.

As counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand

jury of the Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under Sections One and Two of the Sherman Act, you are liable to punishment by fine or imprisonment, or both, in the discretion of the court. 1 2

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit. 3 4

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters

by any of the counsel for the defendants or your own counsel.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment you may refuse to answer every question upon these matters whether addressed to you by your own counsel or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely on your rights not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should

be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you? 1

THE WITNESS: Yes, sir.

Mr. NOBLE: Please note that that reply is in response to a question by the Government.

Mr. HONEYMAN: Please note the objection of the Colwell Lead Company to the action of counsel for the Government in instructing and advising the defendant's witnesses to decline to answer questions put to them on behalf of the Colwell Lead Company and tending to show their defense set up in their separate Answer. 2

Mr. GROSVENOR: Counsel for the Government does not advise the witness one way or the other. I simply state the position of the Government.

Mr. HONEYMAN: Counsel not only advises the witness not to answer, but he threatens and intimidates him with imprisonment and fine, if he does not stand on his constitutional rights. It is a distinct and decided interference by the Government with the witnesses of the Colwell Lead Company and with the Colwell Lead Company in its attempt to establish its defense, and it is not proper for counsel for Government to do anything of that sort. The witness is of age and is represented by competent counsel and he does not need any assistance or advice of counsel for the Government to instruct him not to answer or to refuse to answer the questions put by the counsel for the Defendant. 3

BY Mr. HONEYMAN:

Q. Will you state your residence and business?

A. My residence is Louisville, Kentucky, and I am President of the Standard Sanitary Manufacturing Company. 4

Q. The Standard Sanitary Manufacturing Company and yourself individually are defendants in this Bill of Equity filed on behalf of the United States of America in the Circuit Court for the District of Maryland?

THE WITNESS: Might I ask before you gentlemen ask me any other questions what this particular hearing is for today? I really don't know what this is about.

Mr. HONEYMAN: If you are making your inquiry of me, Mr. Ahrens, I will state that the Colwell Lead Company is a defendant in the suit instituted by the United States of America against the Standard Sanitary Manufacturing Company and others, in the Circuit Court of the United States for the District of Maryland. In that proceeding the Colwell Lead Company has a separate and distinct Answer setting forth its particular situation with reference to the matters and things set forth in the Bill of Equity. The Colwell Lead Company are calling you as a witness to substantiate the matters set forth in its Answer.

THE WITNESS: I want to state for the benefit of counsel for the Government and for the defendants, that I have not given the case my attention up to this time, and, therefore, I am not as well acquainted with these matters as my partner, Mr. Torrance. Do I understand that the Colwell Lead Company takes a different position from the other defendants in this case?

Mr. HONEYMAN: It does, decidedly.

Mr. GROSVENOR: You are somewhat surprised, and I am too.

BY Mr. HONEYMAN:

Q. Well, the business of your Company is the manufacture and sale of enameled iron ware, as I understand it?

A. And other plumbing supplies.

Q. Do you know the Colwell Lead Company in a business way? A. Yes, sir.

Q. How long have you known them?

A. Ten or fifteen years.

Q. What is their business?

A. They are dealers in plumbing supplies.

Q. Whereabouts? A. In New York City.

Q. Do they sell to the plumbers or to the jobbers?

A. So far as I know they sell to plumbers only.

Q. If they sold to jobbers, would you know of it?

A. I should think I would, because we deal with the jobbers in the United States and we do not come in contact with them as competitors and also they deal with our Company as jobbers.

Q. Do you know Dr. Duryea? A. Yes, sir; personally.

Q. How long have you known him? 1

A. A few years; I could not state exactly.

Q. Do you know Mr. Tilden?

A. I have known Mr. Tilden for five or six years, or longer.

Q. I asked you the question, but I don't think you answered it, whether you and your Company were not defendants in this Bill of Equity brought in the District of Maryland? A. Yes, sir.

Q. You are also defendants in the criminal proceedings brought by the Government in Detroit, are you not?

A. Yes, sir. 2

Q. Do you know anything about the Colwell Lead Company procuring the license or making an arrangement with your Company in or about July, 1909, whereby the Colwell Lead Company could use the Arrott patent?

THE WITNESS: I would like to consult with my attorney on this matter.

The witness then consulted with counsel.

THE WITNESS: I know nothing of the Colwell Lead Company making an arrangement with my Company to use this patent.

3

Q. Did it not come to your knowledge as President of the Standard Sanitary Manufacturing Company that the Colwell Lead Company had applied for and received a license for the use of the Arrott patent?

A. My knowledge of that subject is this: As owners of this patent we were willing, under certain conditions, to license other manufacturers, and Mr. E. L. Dawes, the General Manager of the Company, was authorized to make such terms as he believed reasonable with other manufacturers to license them, and he may have taken this matter up with the Colwell Lead Company, but I know nothing of it. 4

Q. Where is the business of the Colwell Lead Company?

A. In New York City.

Q. Do you know whether or not they sell generally throughout the United States, that is sanitary enameled iron ware? A. I don't believe they do.

Q. If they did, you would be liable to know it, wouldn't you? A. I would be certain to know of it.

Q. You don't know of it, do you? A. No, sir.

Q. Were you present at any meetings in the spring of

1910, during the month of April, at Mt. Clemens, Michigan, where there were gathered a number of manufacturers of enameled iron ware? A. No, sir.

Q. You were not present, you say? A. No, sir.

Q. Were you present at any time at Mt. Clemens, Michigan, or in the State of Michigan, at any meeting of manufacturers of enameled iron ware? A. No, sir.

Q. Were you present at any meeting of manufacturers of enameled iron ware where any patents under any license agreements were discussed?

A. I decline to answer that question.

Q. For what reason?

A. On advice of the attorney for the Government, just given to me.

Mr. GROSVENOR: And on advice of your own counsel who was just now speaking to you.

THE WITNESS: Well, on the advice of the attorney of the Government just given to me here, and also because I am informed that giving testimony in this case might tend to incriminate me, and there is no immunity for witnesses who give testimony in this matter. I supposed we were immune, and this immuntiy plea of ours was decided against us in the United States Court in Michigan.

Q. Did you ever have any conversation with any manufacturers at any time on the subject of uniform licenses under the Arrott patent?

THE WITNESS: I decline to answer.

Q. For what reason?

A. I don't have to give any reason, do I—

Mr. GROSVENOR: Certainly.

THE WITNESS: I decline to answer.

BY Mr. HONEYMAN:

Q. You decline to give any reasons?

Gov. WALTER LYON: Counsel for the witness advises him to decline to answer for the reasons above stated. You can note my appearance as personal counsel for the witness.

THE WITNESS: I am not certain now whether I have answered or not. Have I answered it? If not,

I will state again why. I decline to answer on advice of attorney for the Government and on the advice of my own counsel, and also because in the recent immunity plea that was set up in our defense, and which was decided against us, we were told that any evidence which we gave, as I understand it, in such a hearing as this, would not make us immune, or would not give us immunity, and because my evidence here might tend to incriminate me. 1

Mr. GROSVENOR: Counsel for the Government states that he has not advised and does not now advise the witness in the premises, but simply states the position of the Government on the questions of law involved, and leaves it to the witness to decide for himself whether he will answer or not. 2

BY Mr. HONEYMAN:

Q. Mr. Ahrens, were you subpœnaed to attend here today? A. No, sir.

Q. How did you come to be here?

A. Why, I met you gentlemen down at the hotel and you asked me to come here.

Mr. HONEYMAN: Counsel for the Colwell Lead Company gives notice that because of the refusal of the witness to answer these questions, which are material to the defense of the Colwell Lead Company, he will be unable to proceed further with the examination of this witness at this time, and will be obliged to apply to the court for instructions compelling the witness to answer. 3

QUESTIONS BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE: 4

Q. Mr. Ahrens, referring to the statements of the Government and to your previous answers that you were one of the defendants in the suit brought in the United States Circuit Court for the District of Maryland, I ask you whether or not you made answer in that case, pursuant to a subpœna, under oath? A. I did, sir.

Q. Will you please state what the date was on which you verified your Answer? A. September 30, 1910.

Q. And that Answer was thereafter filed as part of your defense in Baltimore? A. Yes, sir.

Mr. NOBLE: I may call him in his own defense.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: Counsel for the Colwell Lead Company now asks that the witnesses be produced on an application before the court for an order compelling them to answer, and that they be held constructively in attendance until that can be arranged for by certification of these proceedings.

Mr. NOBLE: It might be inconvenient for the witnesses to wait around all the time, so I will agree to produce them at the time.

Mr. HONEYMAN: Counsel for the Colwell Lead Company asks counsel for the Government to extend the time, of the Colwell Lead Company, until such application can be made, for the completion of its evidence, due to the refusal of the witnesses to answer the questions put to them by the counsel for the Colwell Lead Company.

Mr. GROSVENOR: Counsel for the Government states that the time of the defendants in this case has been extended with his consent from April 1 to April 8. He will decline to accede to a request, in other words, he will resist any application for an extension of time beyond the date indicated.

Mr. NOBLE: Counsel for the defendants has requested his office—I have been away from there, I may say, since the early part of last week—to notify counsel for the Government that he intended to make an application in Baltimore on Saturday of this week, at the opening of court or as soon thereafter as counsel can be heard. I understand that counsel for the Government has not received that notice.

Mr. GROSVENOR: No, but this notice will be satisfactory. This notice is sufficient, and counsel for Govern-

ment is quite willing to have the motion heard on that day or any other day. 1

(Counsel then conferred.)

Mr. NOBLE: In view of the statement of the stenographer, that he understood that this application was to be made on Saturday in Baltimore, it may be that I shall have to ask the Government to attend on that date, and I shall endeavor to ascertain as quickly as possible what the convenience of the court is to hear the application, and ask the counsels' attendance at that time.

Mr. GROSVENOR: That will be agreeable. 2

Mr. HONEYMAN: I will endeavor to have my application made at the same time.

Mr. GROSVENOR: That is your application to compel the witness to answer?

Mr. HONEYMAN: My application for an extension of time and to compel the witnesses to answer.

At this point the taking of evidence was adjourned until further notice.

Adjourned.

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4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 Post Office Building, Pittsburg, Pa.,

April 17, 1911.

Pursuant to notice, the taking of evidence on behalf of the defendant, the Colwell Lead Company, was resumed this 17th day of April, 1911, in the Post Office Building, at Pittsburgh, Pa., before C. John Beeuwkes.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
On behalf of the Standard Sanitary Mfg. Co., *et al.*
ROBERT B. HONEYMAN, Esq.,
On behalf of the Colwell Lead Co., Dr. Duryea and B. O. Tilden, Esq.
Gov. WALTER LYON,
On behalf of Edwin L. Dawes, Esq., *et. al.*
RUSSELL T. MCFALL, Esq.,
On behalf of the Union Sanitary Mfg. Co., L. C. Huesmann and E. V. Brigham.
4

Mr. GROSVENOR: I wish you would state on the Record that this hearing was called for 10:30 this morning, that counsel for the Government and the Examiner and stenographer have been here ready to proceed since that time, but that the first witness was not called until 11:22 A. M.

Mr. HONEYMAN: I would also like to have you note that Mr. Honeyman was ready and present at 10:30

prepared to go ahead with the examination of the witnesses, that the witnesses were subpœnaed, but for some reason have not put in an appearance until this time. 1

EDWIN L. DAWES, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Co., having been first duly cautioned and sworn, testified as follows:

Mr. GROSVENOR: Mr. Dawes, before you testify I want to say something to you very briefly. You know you are a defendant in this suit and also in the suit in Detroit, which is the criminal suit involving the same matters and things. Now, it is probable that any testimony which you give and which is material in this civil suit may be material and relevant in the criminal suit. I want to point out to you that under these circumstances, relying on the Fifth Amendment, you may decline to answer any questions which Mr. Honeyman, counsel for the Colwell Lead Company, may put to you, which may tend to incriminate you. That is, you may decline to answer those questions which will tend to incriminate you. 2

I also want to tell you that if you do answer you will waive your constitutional privilege, and as counsel for the Government I desire to state that the Government wants it understood that you are not called on behalf of the Government; you are not necessary to the Government's case, and no immunity is promised you. In other words, if you testify you do so at your own risk. 3

THE WITNESS: In other words, I am to consult with my counsel.

Mr. GROSVENOR: I don't care whether you do that or not, but I feel it is my duty to state to you that you testify with no promise of immunity and waiving your constitutional privilege. 4

Mr. HONEYMAN: I think the interference of the Government with the witness called by the Colwell Lead Company is entirely uncalled for, it is highly improper and prevents the Colwell Lead Company from procuring evidence which is material, proper and necessary in the trial of this equity suit. The equity suit was brought by the Government and it

1 is being pushed by the Government, and the Government is now interfering with the effort of the Colwell Lead Company to establish its defense to that suit. We think the effort of the Government to hang us on the one hand, and to endeavor to prevent us from avoiding the hanging on the other, is absolutely unfair and grossly improper.

Mr. NOBLE: I also desire to state that as counsel for the defendants, other than the Colwell Lead Co., Dr. Duryea and Mr. Tilden, I object to the statement of counsel for the Government because it puts the de-
2 fendants in a position of being unable to answer questions fully and freely in their own defense, or to give testimony freely in response to questions which may be addressed to them by any counsel; that it is manifestly unfair to put the defendants in the position where they are being sued and the suit is being presed in an unkindly manner, and then warn them that they may not freely present their defense without the danger of incriminating themselves or waiving any rights which they may have; that this suit is brought by the Government against the various de-
3 fendants, including Mr. Dawes, the witness now on the stand, and Mr. Dawes and others were compelled by service of a subpœna upon them to answer, under oath, in this suit, which answer has heretofore been filed in the Circuit Court of the United States for the District of Maryland; that it is manifestly unfair not to permit the defendants, including Mr. Dawes, the witness, to present whatever evidence they may desire to present in their defense.

Mr. GROSVENOR: I do not advise you either way, to answer or not to answer. Just use your own dis-
4 cretion. I want the position of the Government to be made clear to you before you do answer.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Dawes, state your position?

A. I am second vice-president and general manager of factories of the Standard Sanitary Manufacturing Company.

Q. Where do you reside?

A. New Brighton, Beaver County, Pennsylvania.

Q. You were general manager of factories of the Stand-

ard Sanitary Manufacturing Company during the years 1908, 1909 and 1910? A. Yes. 1

Q. Do you know the Colwell Lead Company? A. I do.

Q. You are a defendant in the equity suit, or in the Petition in Equity brought by the United States against the Standard Sanitary Manufacturing Company, and others, in the Circuit Court for the District of Maryland?

A. Yes, sir.

Q. What is the business of the Colwell Lead Company?

A. They are both manufacturers and jobbers, I believe.

Q. You refer now to the manufacture of Standard sanitary enameled ware? 2

THE WITNESS: Not the Standard.

Mr. HONEYMAN: I mean sanitary enameled iron ware.

A. Yes, sir.

Q. Do you know whether or not they buy enameled iron ware? A. They do.

Q. Do they buy from the Standard Sanitary Manufacturing Company? A. They do.

Q. Do you know whether or not they sell to the jobbing trade? A. I do not. 3

Q. Have you ever known of them as competitors of the Standard Sanitary Manufacturing Company? A. No, sir.

Q. If they did sell to the jobbing trade to any extent, would not you meet them as competitors? A. Yes, sir.

Q. Can you answer the question whether or not they sell generally to jobbers? A. No, sir, I cannot.

Q. They might sell in isolated cases and you not know of it? A. They might sell their excess product.

Q. But they could not sell in any quantity without your knowing it? A. I think not.

Q. Don't you know that they do not have any excess product, from the fact that they buy from you? 4

A. Well, that might be on certain lines that they would have. Of course they would hardly sell excess and buy from us too.

Q. What do they buy from you? A. Our general line.

Q. All classes of enameled ware?

A. All classes of enameled ware, yes.

Q. Have they been buying from you during the last two or three years? A. They have.

Q. You know what the Arrott patent is, of course?

A. I do.

Q. Do you recall any correspondence with the Colwell Lead Company, or its president, Dr. Duryea, or its secretary, Mr. Tilden, on the subject of their using the Arrott patent?

A. I recall we had some correspondence about it.

Q. Do you remember when that correspondence took place, about?

A. It was somewhere in 1908, I believe about August or September.

Q. Do you know whether that correspondence continued until the following spring, 1909?

A. There were some letters passed between us. I could not give you the dates of them.

Q. Do you recall whether or not you told them that they could use the Arrott patent on the basis of $1.00 a day per furnace? A. Yes, sir.

Q. I hand you this letter, Mr. Dawes, and ask you whether that is your signature?

Mr. GROSVENOR: The Government consents to the admission of this letter without objection, and it is not necessary, therefore, for the witness to identify the same.

Mr. HONEYMAN: State if that is your signature to that letter?

A. Yes, sir.

Q. Was that letter sent by you to the Colwell Lead Company?

A. In the regular course of business; yes, sir.

Mr. HONEYMAN: I offer that letter in evidence as "Colwell Lead Company, Exhibit No. 1."

Letter referred to was then duly marked and filed as "Colwell Lead Company, Exhibit No. 1."

This letter reads as follows:

"Standard Sanitary Mfg. Co.,
"General Offices,
"Pittsburgh, U. S. A., Apr. 13/09.

"Mr. B. O. Tilden, President,
"American Sanitary Works,
"New York, N. Y.

"Dear Sir:

"In answer to your favor of the 10th inst., would "state that the license that we have given for the use "of our pneumatic dredge was $1.00 per furnace per "day while the furnace is in operation. In other "words, if you have ten furnaces on which you are "using the pneumatic dredges, it would cost you "$10.00 a day. Credit would be allowed for a furnace "out of operation for a week or greater length of time, "simply for a furnace to be shut down for a day or "two there would be no credit.

"Yours truly,
"E. L. Dawes,
"Mr."

Mr. NOBLE: What is the date of the letter?

Mr. HONEYMAN: April 13, 1909.

BY Mr. HONEYMAN:

Q. Mr. Dawes, have you ever been in the Colwell Lead Company factory at Elizabethport, New Jersey?

A. I have been.

Q. Within the last two or three years? A. No.

Q. Then you don't know of your own knowledge whether they are using the Arrott patent? A. No, sir.

Q. Did you ever have any conversation or did you ever have any discussion with anybody concerning any uniform licenses under the Arrott patent? A. Yes.

Q. Whom did you have such discussion or conversation with?

Mr. NOBLE: I notify the witness that in view of the notice given him by Mr. Grosvenor, counsel for the Government, and the provisions of law in such case, that he has the right to decline to answer that question, because it may tend to incriminate him.

THE WITNESS: I decline to answer the question on the advice of counsel.

Q. Did you ever have any conversation on the subject of the licensing under the Arrott patent with the Colwell Lead Company, or any representative of the Colwell Lead Company, other than the correspondence about which you have already testified?

THE WITNESS: The same answer.

Q. In order to make my question clear: you have testified to having certain correspondence with the Colwell Lead Company. Now I ask you whether subsequent to December 1st, 1909, you had any conversation or correspondence with the Colwell Lead Company, or any representative of the Colwell Lead Company, concerning any uniform license agreements concerning the Arrott patent?

MR. NOBLE: What was that question?

The stenographer then read the last question.

THE WITNESS: I decline to answer that on the advice of counsel.

MR. NOBLE: You had better note that you decline on the ground that it may tend to incriminate you.

THE WITNESS: Just add that to my answer, please.

Q. Were you present at any meeting between January 1st and June 1st, 1910, at which the Colwell Lead Company, or any representative of the Colwell Lead Company, was present? A. I don't recall any.

Q. You have known Mr. Tilden for some time, have you?

A. Yes, sir.

Q. And you were pretty well acquainted with him when you wrote this letter in April, 1909, which has been offered in evidence?

A. Yes, sir, I knew him in a business way and personally for a few years.

Q. And you knew when you wrote him this letter that he was the secretary of the Colwell Lead Company?

A. Yes, sir.

EXAMINATION BY MR. NOBLE, OF COUNSEL FOR WITNESS.

BY MR. NOBLE:

Q. Mr. Dawes, were you subpœnaed to come here today?

A. Yes, sir.

Q. In the suit concerning which Mr. Honeyman asked you some questions, in the Circuit Court in Maryland, did you make an answer in that case? A. Yes, sir.

Q. Were you served with a subpœna in that case?

A. Yes, sir.

Q. And was the answer which you made pursuant to that subpœna? A. Yes, sir.

Q. On what day did you verify your answer made in that case? A. The 1st day of October, 1910.

Q. Was your answer thereafter filed in Baltimore as your defense to this action? A. I suppose it was.

Q. You gave directions to have it done? A. Yes, sir.

Q. Was your answer as then made true?

A. To the best of my knowledge?

Q. Is it true today? A. Yes, sir.

Q. Mr. Dawes, you knew of the existence of what was known as the Sanitary Enameled Ware Association, did you not? A. Yes, sir.

Q. Was there ever any agreement, so far as you know, among the manufacturers, members of that association, to maintain prices on sanitary enameled iron ware?

A. No, sir.

Q. Was there ever any agreement among them to restrict output? A. No, sir.

Q. Did that association have anything to do with bringing about what has been known here as the licenses given by Mr. Wayman to the various manufacturers, being agreements similar to Petitioner's Exhibits 9 and 11 and Exhibits 8 and 9 attached to the Petition, and known as "License Agreement" and "Jobbers' License Agreement?"

A. No, sir.

Q. Did the members of that association—did the individual manufacturers who were members of that association have anything to do with bringing about the licenses granted by Mr. Wayman to which I have just referred? A. No, sir.

Q. Was there any connection of any kind, so far as you know, between that association, or any of its members, and Mr. Wayman, acting to bring about these licenses?

THE WITNESS: You mean a concerted action?

MR. NOBLE: Yes.

A. No, sir.

1 Q. It is charged in the Government's petition that the assignment to Mr. Wayman of the Arrott patent was conditional. Was there any agreement at any time between the Standard Sanitary Manufacturing Company and Mr. Wayman relative to the assignment of that patent, other than that expressed in the written papers being Petitioner's Exhibits Nos. 5 and 6? A. I will answer that no.

Q. During the year 1909, did you have any conferences with Mr. Wayman relative to the Arrott patent?

A. A number of them.

Q. Do you recall when those conferences began?

2 A. I cannot.

Q. If I were to tell you that it was some time after the middle of August and before the end of September, would that tend to refresh your recollection?

A. Well, it was along in there, some time.

Q. That they began? A. Yes.

Q. How frequently did you confer with Mr. Wayman?

A. A number of times; I cannot tell you.

Q. Did you seek him or did he seek you?

A. He sought me.

Q. What was the subject-matter of those conferences?

3 A. To purchase the patent, or a license to him to use it and re-license others.

Q. As I understand you, the object of those conferences on his part was either the purchase of the Arrott patent, or the obtaining from the Standard Sanitary Manufacturing Company the exclusive right to license other manufacturers?

A. Yes, sir.

Q. Did he ever obtain an option from the Standard Company to purchase the Arrott patent?

A. I think not; I don't recall.

Q. Did he ever obtain an agreement with you by which

4 you agreed that he could have an option?

A. Yes; that is, we agreed on a price ultimately at which he could have the patent; whether that was an option or not I cannot recall. Is that an answer to the question?

Q. Yes. You gave him an oral option? A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. Do you recall the date that you gave him the oral option? A. No, sir; I do not.

Q. If I told you that it was December, 1909, would that refresh your recollection? 1

A. I remember it was in December, close on to the end of the year.

Q. And at that time you gave him an option for the Standard Company to acquire the Arrott patent?

A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. Then, let us put it this way: what was the option which you gave him and which you mentioned?

A. The option was covered by this agreement. 2

Q. You mean it was later embodied in written form?

A. Yes.

Q. And the option which was later embodied in written form was substantially the same option which you gave him in the latter part of December, 1909? A. I would say yes.

Q. Do you recall when you agreed with Mr. Wayman upon the price which he was to pay for the Arrott patent?

A. The latter part of December, 1909, somewheres.

Q. The Government alleges in its bill that Mr. Wayman is the ostensible licensor under the Arrott and certain other patents, namely the Arrott patent No. 633,941, the Dithridge, 3 949,625, and the Lindsay, 939,918; was there any agreement of any kind, so far as you know, with Mr. Wayman, on the part of the Standard Sanitary Manufacturing Company, or anyone else, whereby Mr. Wayman was to become the "ostensible licensor" of these licenses to which I have previously referred? A. No, sir.

Mr. GROSVENOR: Where is that term?

Mr. NOBLE: On page 16 in the second full paragraph on that page, about five lines down.

Mr. GROSVENOR: Thank you. 4

BY Mr. NOBLE:

Q. It is stated in the Government's Petition that the defendants had agreed upon a price list wherein were stated all the articles of sanitary enameled iron ware made by all of the defendants and in which were specified the prices at which those articles should be sold by the defendants throughout the United States and the re-sale prices which jobbers should observe in making sales of the same articles

1 to their customers. In other words, this price list arrived at by agreement and consultation between defendants and without competition between them fixes the price which every user of sanitary enameled iron ware in the United States must pay for every article manufactured by the defendants. Is that true? A. No, sir.

Q. Was there ever any agreement between the Standard Sanitary Manufacturing Company and any other company manufacturing sanitary enameled iron ware agreeing upon prices at which sanitary enameled iron ware should be sold either to jobbers or to consumers? A. Not to my knowledge.

2 Q. Now, it is stated in the Government's Petition, on page 15: "All of the defendants determined and agreed that three competing patents, being patents for tools called 'dredger for pulverulent material,' 'pneumatic sieve' and 'enameling powder distributor' respectively should be assigned by three defendants, each of whom owned one patent, to defendant E. L. Wayman, each patent for a nominal consideration and subject to reassignment at the expiration of a short term on the demand of the party making the assignment to Wayman." Then it alleges that these three patents are the ones to which I have called your attention before.

3 Is that allegation true?

A. I would say no, although some of those things I had nothing whatever to do with.

Q. You have no knowledge of such an agreement?

A. None whatever.

Q. You do know the terms under which the Arrott patent was assigned to Mr. Wayman? A. Yes, sir.

Q. And you do know those were not the terms under which the Arrott patent was assigned to Mr. Wayman, is that true? A. No, sir.

Q. It is not?

4 THE WITNESS: Well, I don't understand the question.

MR. NOBLE: Read it, please.

The stenographer then read the last question.

THE WITNESS: They were assigned under the written agreements.

Q. Those being Exhibits 5 and 6? A. Yes, sir.

Q. Mr. Dawes, was there any agreement between the Standard Sanitary Manufacturing Company, or anyone con-

nected with the Standard Sanitary Manufacturing Company, or anyone else, any other manufacturer, or with any other manufacturer and Mr. Wayman, other than is expressed in the written papers known as "Petitioner's Exhibits 5 and 6," so far as you know? A. No, sir. 1

No Cross Examination.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: Of course, this witness having refused to answer certain questions, if Judge Holland grants the application which was made before him last Tuesday to compel the witnesses to answer, I shall recall Mr. Dawes to give answers to the questions which I asked him this morning. Other than that I will not require Mr. Dawes' attendance here. 2

Mr. NOBLE: Counsel for Mr. Dawes will agree to produce him on sufficient notice.

THOMAS WALKER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 3

Mr. GROSVENOR: Mr. Walker, before you answer any questions which may be addressed to you by Mr. Honeyman, I have something to say to you. I am not sure if you were here when Mr. Dawes was on the stand. Did you hear what I said to him?

THE WITNESS: Yes, sir; I do not recall exactly what it was.

Mr. GROSVENOR: I want to remind you, then, that you are a defendant in this suit and also in the suit in Detroit, and the same matters are involved in both suits. Accordingly, nearly everything that you say here, which may be material on the questions of law involved in this case may be and probably will be relevant and material in the Detroit suit. It accordingly follows that as you are a defendant in the Detroit suit, which is a criminal suit, anything which you say here may incriminate you there. I want to tell you that under that circumstance, relying on the 4

protection which the Fifth Amendment of the Constitution gives you, you may decline to answer any questions which will incriminate you, if you desire to do so. But, if you do answer, I want to tell you this on behalf of the Government, that your testimony will be given voluntarily and at your own risk, and the Government is not expecting to give you any immunity by reason of your testifying. I simply want to make the position of the Government clear to you. You will, of course, do as you like.

THE WITNESS: I do not feel that I have done anything criminal. I will say that right now.

Mr. GROSVENOR: I just wanted to make plain what the Government's position is. I do not advise you one way or the other.

THE WITNESS: Thank you.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to note the same objection as was made heretofore to the statement made by Mr. Grosvenor, counsel for the Government; that is the same objection which was made after counsel for the Government made his statement to Mr. Dawes.

Mr. NOBLE: Counsel for the defendants makes the same objection as to this witness Thomas Walker, he being also a defendant, which he entered upon the record as to the witness, Mr. Dawes.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Will you state your business, please?

A. In the foundry and enameling business.

Q. Connected with what company?

A. McVay-Walker Company, Braddock.

Q. Where do you reside? A. Pittsburgh.

Q. Are you acquainted with the Colwell Lead Company?

A. I know of them and have heard of them. I don't think I have ever done any business with them.

Q. Have you known of them for some years?

A. Yes, sir; I have. They are in New York—I think they do busines there.

Q. Do you know what their business is?

A. I think it was originally the lead pipe business, or something of that kind. I am not certain.

Q. Do you know whether or not they manufacture sanitary enameled iron ware? 1

A. If they do, it is in a small way. I do not think they do much of an enameling business. I never heard of them much.

Q. Have you any general knowledge, as a manufacturer of enameled iron ware yourself, as to the business of the Colwell Lead Company in enameled iron ware? A. No, sir.

Q. Do you know whether or not, of your own knowledge, they sell to jobbers or plumbers and the general public?

A. I understood they did sell to the plumbers and the general public in New York. 2

Q. Do you know whether or not they sell to jobbers?

A. That I couldn't say.

Q. If they did sell to jobbers would you know of them as competitors in your business? A. Yes, I think we would.

Q. Have you ever run across them as competitors?

A. No.

Q. Do you know whether or not they sell generally throughout the United States? A. I don't know that.

Q. If they did, you would know of it?

A. Yes, sir, if they did I would know of it.

Q. But you never heard of it? 3

A. No, sir. I think they only commenced in that business of late years, according to my recollection.

Q. How lately?

A. I have heard of it about five or eight years.

Q. That is, you heard of them being in the enameled iron business in the last five or eight years or so? A. Yes, sir.

Q. If, during the last two or three or four years they sold generally throughout the United States, or sold to the jobbing trade, wouldn't you be liable to know of it?

A. Yes, sir; I never heard of them out in this section at all. I heard of them in New York. 4

Q. You simply heard of them as a local dealer in New York, is that the idea? A. Yes, sir.

Q. And you never heard of them selling to jobbers?

A. No; my understanding—

Mr. NOBLE (interrupting): Don't volunteer, Mr. Walker.

THE WITNESS: They are in the lead business, that's all.

1 By Mr. Honeyman:

Q. Mr. Walker, do you know of the Arrott patent? Do you know what they are? A. Yes, sir.

Q. Do you know whether or not the Colwell Lead Company used the Arrott patent?

A. I don't know that. I don't know that they ever used them.

Q. Did you ever have any discussion or conversation with anybody concerning any uniform license under the Arrott patent?

A. I never had, unless it was what we heard through
2 Mr. Wayman. I never heard of any discussion with anybody else about it.

Q. And you never had any discussion with the Colwell Lead Company on that subject? A. No, sir.

Q. Or anybody representing the Colwell Lead Company?

A. No, sir; never had any communication with them, so far as I know.

Q. You never had any communication with anybody representing the Colwell Lead Company, directly or indirectly?

A. No, sir.

Q. You never attended any meetings of enameled iron
3 ware manufacturers where the Colwell Lead Company was represented? A. I don't recall.

Q. If you did, you would remember it?

A. Yes, sir; I have a pretty good memory of people and faces when I meet them.

Mr. Honeyman: That is all.

Examination by Mr. Noble, of Counsel for Witness.

By Mr. Noble:

Q. Mr. Walker, you knew of the existence of the Sani-
4 tary Enameled Ware Association, did you not?

A. Yes, sir.

Mr. Grosvenor: There have been several of those associations. It might be advisable to make clear on the record that your question refers to the one which was formed in 1909.

Mr. Noble: Yes, sir.

The Witness: I refer to the one of which Mr. Wayman was Commissioner.

Q. Was your company or any of its officers members of 1
that Association?

A. We were solicited to join this association.

Q. Do you know whether or not you were members of that association? A. I am not positive about that.

Q. So far as you know, did that association have anything to do with bringing about the licenses similar to Exhibits Nos. 9 and 11, known as the "License Agreement" and the "Jobber's License Agreement," which were issued in the spring of 1910 by Mr. Wayman? A. No, sir.

Q. Did the McVay-Walker Company, or did any of its officers, at any time have any agreement with other manu- 2
facturers to maintain prices upon sanitary enameled iron ware? A. No, sir, decidedly not.

Q. Or to restrict the output? A. No, sir.

Q. Have you at any time ever had any agreement with other manufacturers to maintain prices on sanitary enameled iron ware? A. With no one.

Q. Or to restrict the output? A. No, sir.

Q. Is the Arrott patent used in your factory?

A. It was used under his license, and we used it before.

Q. Did you have any right to use it before?

A. It was a question whether we had or not. I had a 3
notice that they had a patent on it.

Q. You had no license from the Standard Sanitary Manufacturing Company?

A. No, sir, but we got a notice that they had a patent on it.

Q. They notified you to quit using it? A. Yes.

Q. Subsequent to that your company got a license from Mr. Wayman?

A. Yes, sir; my son knows more about that. That was my understanding.

Q. Now, the Government alleges in its Petition that all 4
of the defendants—and you and your son and your company are among those defendants—determined and agreed that three competing patents, being for tools called "dredger for pulverulent material," "pneumatic sieve," and "enameling powder distributor," respectively, should be assigned by three defendants, each of whom owned one patent, to the defendant, E. L. Wayman, each for a nominal consideration and subject to reassignment on a short term, on demand of

1 the party making the assignment to Wayman, and then the Government alleges that in accordance with this agreement, the Arrott, Dithridge and Lindsay patents were assigned by the Standard Sanitary Manufacturing Company, the Mott Company and the Wolff Company to Mr. Wayman?

A. I know nothing about that.

Q. Is that statement true?

A. I know nothing about it.

Q. Were you and your company or your son parties to any such agreement?

A. No, sir. I can answer that decidedly.

2 Q. Now, the Government further alleges that before these assignments to Mr. Wayman were made all of the defendants, and that includes the McVay-Walker Company, yourself and your son, had agreed upon all the essential features of this licensing arrangement, so-called; is that true?

A. No, sir.

Mr. GROSVENOR: This witness has testified that he don't know anything about it. I don't see the purpose of continuing this line of questioning.

Q. Is there any truth in that statement which I have
3 just made to you, so far as you, your son, and the McVay-Walker Company are concerned? A. No, sir.

Q. They further say: "they had determined upon all the "principal conditions and terms of the contracts to be en-"tered into by the manufacturers with Wayman, ostensible "licensor; upon the jobber's licensing agreements; upon the "resale prices at which jobbers should sell in interstate com-"merce to plumbers, retailers and consumers." Is that statement true, so far as concerns the McVay-Walker Company, yourself and your son? A. No, sir.

Q. Is there any truth in that statement at all so far as
4 it concerns the McVay-Walker Company, yourself or your son, Mr. Alexander Walker? A. No, sir.

Q. Mr. Alexander Walker is the gentleman to whom I have referred as your son? A. Yes, sir.

Q. Did you ever have any agreement with any of the other defendants, individuals or corporations—

A. (Interrupting): No, sir.

Q. (Continuing): —whereby you agreed that Mr. Wayman should license you and them? A. No, sir.

Q. So far as your company is concerned, I would like to know whether you ever had any talks with anyone relative to the license from Wayman similar to Petitioner's Exhibits Nos. 9 and 11, other than Mr. Wayman. 1

A. Nobody but Mr. Wayman. Any conversation or writings we ever had were with Mr. Wayman and nobody else.

Q. The Government goes on and says: "They"—meaning the defendants above referred to—"had agreed upon a price "list wherein were stated all the articles of sanitary enameled "iron ware made by all of the defendants and in which were "specified the prices at which those articles should be sold "by the defendants throughout the United States and the "resale prices which jobbers should observe in making sales "of the same articles to their customers. In other words, "this price list arrived at by agreement and consultation be- "tween defendants and without competition between them "fixes the price which every user of sanitary enameled iron "ware in the United States must pay for every article manu- "factured by the defendants." Is that statement true as to the McVay-Walker Company, yourself, or Mr. Alexander Walker, your son? 2

A. No, sir; I don't know how Alexander is concerned.

Q. Did you or the McVay-Walker Company agree upon any price list with other manufacturers? A. No, sir. 3

Q. At any time?

A. No, sir; never had any communication with any other manufacturers as to what we were going to sell at.

Q. Are you testifying here today under a subpœna?

A. Yes, sir.

Q. By whom were you subpœnaed?

A. By the Colwell Lead Company, I think it says. I have the subpœna here somewheres.

Q. Were you subpœnaed to answer in the civil suit in the United States Circuit Court for the District of Maryland? 4

A. I don't recall whether we were or not. If I was, I suppose it is down there.

Q. Mr. Walker, the fact is that you were served with a subpœna as the Marshal's return shows? A. Yes, sir.

Q. Pursuant to that subpœna did you make answer to the civil suit in Baltimore? A. Yes, sir.

Q. And did you direct that your answer be filed in this suit as your defense? A. I think we did, yes, sir.

Q. Upon what day did you verify your answer?
A. October 19, 1910.
Q. Was what you stated in your answer at that time true?
A. My recollection is that everything there is truthful.
Q. And is what you said in that answer true today?
A. Yes, sir.

Mr. NOBLE: That is all at present.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Walker, who has active charge of your company?
A. My son Aleck, but he don't do anything without calling me up on it. I am the owner, really. It is a close corporation, owned by the family.
Q. When were you subpœnaed to appear here?
A. I got this last week.
Q. When?
A. The subpœna will tell, I guess—last Saturday, I guess. I got this at home. It was left at the house. This (indicating) is marked April 17; it was the 15th day of April.
Q. When were you served? This shows the date that the subpœna was issued?
A. On Friday or Saturday. I was not home at the time.
Q. Did you receive a telegram about it? A. Yes.
Q. From whom? A. From the people in New York.
Q. Noble, Jackson & Hubbard? A. Um-hum.
Q. They notified you by wire that you would be a witness today?
A. No, they said there would be testimony taken. That is it.
Q. And notified you to be here? A. Yes.

BY Mr. NOBLE:

Q. Have you a copy of my telegram?
A. I have it at home, Alex may have it. I left it home for him.

Mr. NOBLE: This (indicating) is the one that I sent to Mr. Weiskittel. I sent that identical telegram to every defendant, as a means of proving the case of the defendants, without any consultation with anyone, and more particularly I did not consult with or notify Mr. Honeyman, who is counsel for the Colwell Lead Company.

Mr. HONEYMAN: I personally know nothing about

what Mr. Noble did and never saw the telegrams. I made my own arrangements with attorneys in Pittsburgh for the issuance and return of subpœnas on an affidavit which I forwarded for that purpose. 1

Mr. NOBLE: I dictated one copy of a telegram and instructed my assistant to send it to all of the defendants whom I represent.

BY Mr. GROVENOR:

Q. That telegram was received before the service of the subpœna, was it not?

A. The same day, I think; that is to my recollection; I know when I got home in the evening the subpœna was there. 2

Mr. GROSVENOR: I offer this telegram as "Petitioner's Exhibit No. 285," it being a copy of a telegram such as was sent to the witness, and I will offer this subpœna in evidence also as "Petitioner's Exhibit No. 286."

Telegram and subpœna referred to were then marked and filed as Petitioner's Exhibits Nos. 285 and 286 respectively.

Petitioner's Exhibit No. 285 reads as follows:

"TELEGRAM. 3

"New York, April 14-11.

"Anton Weiskittel Care A. Weiskittel Co.,
"Balto. Md.

"Defendants must close taking testimony in civil "cause by twenty-second have notified Government com- "mencing to take testimony Pittsburg Monday seven- "teenth desire your presence there Monday for full "conference and on succeeding days.

"Noble, Jackson & Hubbard." 4

Petitioner's Exhibit No. 286 reads as follows:

"United States of America, }
"Western District of Pennsylvania, } set.

"The President of the United States,
"To Thomas Walker,
"(Seal) "Pittsburgh, Pa.

"We command you, That laying aside all manner

"of business and excuses whatsoever, you personally "be and appear before Lindsay C. Spencer, Esq., an "Examiner duly appointed by the Circuit Court of the "United States, in and for the Western District of "Pennsylvania, at Pittsburgh, Pa. (Post Office Build-"ing) on Monday, April 17, 1911, at 10 o'clock A. M., "then and there to testify all and singular those mat-"ters and things which you shall know in a certain pro-"ceeding now depending in the said Court, and unde-"termined between The United States of America, and "Standard Sanitary Manufacturing Company, *et al.* "on the part of the said defendant Colwell Lead Co. "And hereof fail not, UNDER THE PENALTY OF "FOUR HUNDRED DOLLARS.

"WITNESS, the Honorable Edward Douglas White, "Chief Justice of the Supreme Court of the United "States, at Pittsburgh, this 15th day of April, 1911, "and in the 135th year of the Independence of the "United States.

"H. D. Gamble, Clerk."

Mr. GROSVENOR: That will be all.

Mr. NOBLE: I want to state that at the same time I dictated the notice to the Government that I would commence taking testimony in Pittsburgh this week, I also dictated the telegrams to the various defendants which I have referred to, and I likewise dictated a telegram to Mr. Lindsay C. Spencer, and to Mr. Weinberg, the stenographer, at the same time.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ALEXANDER C. WALKER, a witness of competent age, produced on behalf of the Colwell Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business, please?

A. Secretary and treasurer of the McVay-Walker Company.

Q. You are the son of the previous witness, Mr. Thomas Walker? A. Yes, sir.

Q. How long have you been connected with the McVay-Walker Company? A. About eight or ten years, I guess. 1

Q. You are active in the management of its affairs?

A. Yes, sir.

Q. You are familiar with the business of manufacturing sanitary enameled iron ware? A. Yes, sir.

Mr. GROSVENOR: You were present, Mr. Walker, and heard what I said to your father about his right to answer questions?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: What I said to him applies to you. If you wish me to say it again, I will do so. 2

THE WITNESS: I think I understand it.

Mr. GROSVENOR: That is, that you don't have to answer unless you want to?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: And if you do answer, you waive your constitutional privilege.

THE WITNESS: Yes, sir.

Mr. HONEYMAN: You understand the position of the Colwell Lead Company is that they have a separate defense in this equity suit, almost in the nature of an alibi, and the only way they can show their alibi is by the people alleged to be in the conspiracy. You appreciate that the Colwell Lead Company has a right to establish its innocence of the charge made against it in this Bill in Equity. We are calling you for the purpose of sustaining our separate defense. I want to say to you that we think you are required to answer our questions, and if you do not answer them, we will do the best we can to have the requirement enforced by one of the Judges of the Court. 3

Mr. GROSVENOR: You do as you like, of course. 4

Mr. NOBLE: I enter the same objection to the statement of the counsel for the Government as I made at the close of his statement made to Mr. Dawes.

Mr. HONEYMAN: I note an objection to the statement of counsel for the Government, and also object to the statement that the witness will do as he likes.

Mr. GROSVENOR: If that was too abbreviated, this

1 is what I mean: I don't advise you whether to answer or not to answer. That rests in your discretion.

By Mr. HONEYMAN:

Q. You know the Colwell Lead Company? A. Yes, sir.

Q. How long have you known of them?

A. I think ever since I have been in business.

Q. You know generally their business? A. Yes, sir.

Q. What is their business?

A. Manufacturing jobbers.

Q. They manufacture enameled iron ware? A. Yes, sir.

2 Q. Do you know whether or not they sell to jobbers or whether they are themselves a jobbing house?

A. They are themselves a jobbing house.

Q. Do you know to whom they sell, generally speaking?

A. No, sir; mostly in their own territory, I think, in the territory in which the company is located.

Q. Do they sell to jobbers or to plumbers?

A. Plumbers that I know of.

Q. Do you know of their selling to jobbers at all?

A. No, sir.

Q. If they did, do you think you would know of it?

3 A. Yes, sir.

Q. What is their territory?

A. New York City and the vicinity.

Q. You never heard of their selling outside of that locality, did you?

A. I think they have a branch house in New England.

Q. Worcester, Massachusetts? Did you ever hear of their selling anywhere else than there? A. No, sir.

Q. Do you know of their having agencies throughout the United States and selling generally throughout the United States? A. I don't think I do.

4 Q. If they did, would you know of it? A. Yes, sir.

Q. Did you ever run against them as competitors?

A. No, sir.

Q. You sell generally to jobbers? A. Yes, sir.

Q. Do you know whether or not the Colwell Lead Company use the Arrott patent? A. I don't know.

Q. Do you know whether or not they buy enameled iron ware? A. I don't know.

Q. They have not bought from your concern?

A. No, sir.

Q. You don't know whether they bought from others or not? A. No. 1

Q. You know yourself what the Arrott patent is?

A. Yes, sir.

Q. Your company has used it? A. Yes, sir.

Q. Did you ever have any discussion or consultation with anyone respecting the granting of uniform licenses under the Arrott patent? A. No, sir.

Q. Did you ever have any consultation or discussion with the Colwell Lead Company, or any representative of the Colwell Lead Company concerning the Arrott patent?

A. No, sir. 2

Q. Or with Dr. Duryea or Mr. Tilden? A. No, sir.

Q. Did you ever have any understanding or agreement, express or implied, with the Colwell Lead Company or any representative of the Colwell Lead Company concerning these patents? A. No, sir.

Q. Or concerning any resale agreements? A. No, sir.

Q. Or concerning the maintenance of prices? A. No, sir.

Q. Were you ever present at any meeting of manufacturers at any time or place where the Colwell Lead Company was represented? A. Yes, sir.

Q. Were you present at any meeting of manufacturers subsequent to January 1st, 1910, where the Colwell Lead Company was represented? 3

A. I am not certain.

Q. Do you recall any such meeting?

A. I don't think I do.

Q. There was such a thing as a manufacturers' association, was there not? A. Yes, sir.

Q. Which existed for a good many years? A. Yes, sir.

Q. And prior to December, 1909, you may have met a representative at some of those meetings?

A. Yes, sir, it is likely. 4

Q. Other than that, do you recall any meetings of manufacturers of sanitary enameled iron ware at which the Colwell Lead Company was represented?

A. No, sir, I do not remember any.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE:

Q. Mr. Walker, were you subpœnaed to come here to testify today? A. Yes, sir.

1 Q. By whom were you subpœnaed?

A. The Colwell Lead Company.

Q. Did you make an answer in this case in the suit in Baltimore, brought in the Circuit Court of the United States for the District of Maryland heretofore? A. Yes, sir.

Q. Was a subpœna served upon you in that suit?

A. Yes, sir.

Q. And was it pursuant to that subpœna that you made the answer? A. Yes, sir.

Q. Was your answer filed in Baltimore thereafter?

A. Yes, sir.

2 Q. On what day did you verify that answer?

A. October 14, 1910.

Q. Was what you said in your answer at that time true?

A. Yes, sir.

Q. Is it true today? A. Yes, sir.

Q. Were you or your company a member of the Sanitary Enameled Iron Ware Association? A. Yes, sir.

Q. That was an association of which Mr. Wayman was at one time Commissioner? A. Yes, sir.

Q. Did that association have anything to do with bringing about the licenses granted by Mr. Wayman in 1910, 3 which are similar to Exhibits 9 and 11? A. No, sir.

Q. Did you or your company ever have any agreement at any time to maintain prices upon sanitary enameled iron ware with any other manufacturer? A. No, sir.

Q. Or to restrict the output? A. No, sir.

Q. Has your company at any time ever had any agreement with any other manufacturer to maintain prices or restrict output? A. No, sir.

Q. From whom did you first hear of the licenses known as the "License Agreement" and the "Jobber's License Agreement?" A. Mr. Wayman.

4 Q. Had your company used at one time a device similar to the Arrott invention? A. Yes, sir.

Q. Previous to obtaining a license from Mr. Wayman?

A. Yes, sir.

Q. Was any objection ever made to the use of that by you?

A. Yes, sir.

Q. By whom was that objection made?

A. The Standard Sanitary Mfg. Co.

Q. Thereafter your company was licensed by Mr. Wayman to use the Arrott and other patents, was it not?

A. Yes, sir. 1

Q. Mr. Walker, the Government has alleged in its Bill that "all the defendants," including yourself as an individual, your father and the McVay-Walker Company, had agreed with all the other defendants that three competing patents, known as the Arrott patent, the Ditheridge patent, and the Lindsay patent, they being patents for tools called "dredger for pulverulent material," "pneumatic sieve" and "enameling powder distributor," respectively, should be assigned by the three defendants, namely, the Standard Sanitary Manufacturing Company, the Mott Company and the Wolff Company, to Mr. Wayman as "ostensible licensor" for 2
a nominal consideration, subject to reassignment to the parties making the assignments to Mr. Wayman. Is there any truth in that allegation as far as concerns you— A. No, sir.

Q. Your father and the McVay-Walker Company?

A. No, sir.

Q. Did you ever have any agreement with any other defendant looking to the assignment of any patents to Mr. Wayman? A. No, sir.

Q. Did you ever have any agreement with any other defendant looking to the licensing of your company by Mr. Wayman? A. No, sir. 3

Q. The Government alleges also that all the defendants had agreed upon the essential features of the licensing arrangement before the assignments were made. Did you or the McVay-Walker Company have any agreement with any defendant as to any features of the licensing arrangement, so-called? A. No, sir.

Q. Previous to obtaining the license from Mr. Wayman?

A. No, sir.

Q. Did you at any time have any agreement with other manufacturers of sanitary enameled iron ware, defendants here, to maintain prices or limit output or otherwise sup- 4
press competition? A. No, sir.

Q. The Government further alleges that all the defendants had determined upon all the principal conditions and terms of the contracts to be entered into by the manufacturers with Wayman upon the jobber's license agreement, upon the resale prices at which jobbers should sell in interstate commerce to plumbers, retailers and consumers, alleging Wayman to be the "ostensible licensor." Is that statement true as to you or the McVay-Walker Company?

1 A. No, sir.

Q. Is there any truth in it as to you or the McVay-Walker Company? A. No, sir.

Q. The Government further alleges that all the manufacturers, including yourself and the McVay-Walker Company, had agreed upon the prices of the sanitary enameled iron ware manufactured by the defendants, and that the manufacturers should observe certain prices of sale and resale prices to jobbers. In other words, that a price list had been agreed upon or arrived at by agreement and consultation between the various defendants and without competition be-
2 tween them, fixing the prices on sanitary enameled iron ware in the United States. Is that statement true? A. No, sir.

Q. As to you or the McVay-Walker Company?

A. No, sir.

Q. Or anybody connected with it? A. No, sir.

Q. You have general charge of the McVay-Walker Company's business, have you not? A. I have had.

Q. If any such agreement was made, you would know about it, would you not?

A. Yes, sir. I might alter that statement that I have had full charge of the company. I haven't charge of it, but
3 I am familiar with everything that occurred.

Q. Have you ever had any agreement with anyone concerning the Arrott patent or the Ditheridge patent or the Lindsay patent, other than Mr. Wayman? A. No, sir.

Q. Did you or your company have any agreement with any other manufacturer in regard to the assignment of the patents, which I have mentioned before, to Mr. Wayman?

A. No, sir.

Q. Or did you have any agreement with any other defendant as to the issuing of licenses under those patents by Wayman to you or to anyone else?

4 THE WITNESS: I don't understand that question.

Mr. NOBLE: Will you read it, please?

Stenographer then read the last question.

THE WITNESS: I don't quite understand it.

BY Mr. NOBLE:

Q. Well, did you have any agreement with any other manufacturer defendant in this action as to the issuing of

licenses by Wayman to you or to any other manufacturer? A. No, sir. 1

Mr. NOBLE: I think that is all.

Examination Suspended.

At this point the examination of the witness was suspended, and a recess was taken for one hour.

After Recess. 2

ALEXANDER C. WALKER, resumed the stand for cross examination, and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Walker, you knew during the early part of 1910, that is from about January up to May, that the various manufacturers were having meetings with Wayman respecting the entering into of licensing arrangements?

Mr. NOBLE: I object to the question as assuming knowledge on the part of the defendant which nothing in the record shows he has knowledge of. The witness stated that he had no meetings with any manufacturer wherein he discussed or conferred concerning the license agreement which Mr. Wayman later gave his company. 3

THE WITNESS: Well, Mr. Noble—

Mr. GROSVENOR: Just answer the question. Don't talk to your counsel now, please.

THE WITNESS: May I ask—

Mr. GROSVENOR: Just read the question. If it is not clear, I will make it clear. 4

THE WITNESS: I thought counsel had the right to advise me as to whether I should answer the question or not. I have the privilege of refusing to answer.

Mr. GROSVENOR: You have lost it. I warned you when you went on the stand that if you answered these questions you would be subjected to cross examination.

Mr. NOBLE: Mr. Walker, in view of the statement made to you at the beginning of your testimony by

1 the counsel for the Government, and of the law in such case, I advise you that you have the right to decline to answer any question which you may think may tend to incriminate you.

THE WITNESS: Can I ask for your advice?

Mr. NOBLE: Yes.

THE WITNESS: Well, I ask your advice.

Mr. GROSVENOR: My understanding of the law is that you have no right to consult counsel respecting the privilege. Of course, there is no one to rule on these questions here, but everything that you say goes on the Record. Now, will you read the question to 2 the witness again, and let him state if he will answer or not?

The stenographer then read the last question.

A. No, sir.

Q. Did you receive letters from time to time from Mr. Wayman respecting the entering into of a license agreement with him, under the Arrott patent? A. Yes, sir.

Q. Did that correspondence enlighten you as to what other manufacturers were indicating whether they would or would not enter into a licensing arrangement with Wayman? 3

Mr. NOBLE: I object to the question on the ground that the Government is asking about certain correspondence which counsel for the Government has, in answer to his question, elicited information from the witness that he received referring to the licensing agreement, so that the correspondence speaks for itself, and I object to the attempt on the part of the Government trying to ascertain what that correspondence contains by such a question.

Mr. GROSVENOR: Read the question, please.

4 The stenographer then read the last question.

Mr. NOBLE: My objection is renewed.

THE WITNESS: Do you wish me to refuse to answer when you object?

Mr. NOBLE: No, I stated my objection on the record. If the question tends to incriminate you, you have the right to refuse to answer.

THE WITNESS: Please repeat the question.

The stenographer again read the question.

A. There was a meeting— 1

Mr. NOBLE: Just answer the question whether that correspondence enlightened you as to whether other manufacturers would make a licensing arrangement with Mr. Wayman.

A. Yes, sir.

BY Mr. GROSVENOR:

Q. So you knew he was trying to get licensing agreements with other manufacturers than yourself?

A. Yes, sir.

Q. Your company signed an agreement with Mr. Wayman on May 6th, 1910, is that right? 2

Mr. NOBLE: One minute—

THE WITNESS: I don't remember the date.

Mr. NOBLE: Wait a minute. You have a right, as to that question to decline to answer on the ground that it would tend to incriminate you, because the Government alleges in this case and in the indictments which were found in Detroit, that the making of that agreement was unlawful and constituted a crime; therefore, your constitutional privilege gives you the right to decline to answer that question, on 3 the ground that it would tend to incriminate you, and I advise you that that is your right.

THE WITNESS: Well, I decline to answer that question on the ground that it may tend to incriminate me.

Mr. NOBLE: The Government has no right to ask you to answer any question that would tend to incriminate you, until they take that question to a United States Judge and let him pass on it.

Mr. GROSVENOR: We don't want to get into a discussion of the law here. I want to read you this, as 4 I think your counsel is improperly advising you. In the case of Sawyer *vs.* the United States, 202 U. S., 165, Justice Peckham, of the Supreme Court, said:

"It has been held in this Court that a prisoner who "takes the stand in his own behalf waives his consti- "tutional privilege of silence, and that the prosecu- "tion has the right to cross examine him upon his "evidence in chief with the same latitude that would

1 "be exercised in the case of an ordinary witness as to "circumstances connecting him with the crime."

I want you to know that, because that is the reason I made the statement I did this morning to the witnesses when they went on the stand.

Mr. NOBLE: I object to counsel for the Government attempting to intimidate this witness. If counsel for the Government wants an answer he has his remedy and can go to the Court and ask him to instruct the witness to answer.

Mr. GROSVENOR: Read the question, please.

2 Last question was then read by the stenographer.

Mr. NOBLE: I advise you of your constitutional right as before stated, that you need not answer that question. This is not a criminal case. You are here under subpœna issued by the Colwell Lead Company, and you need not answer that question under your constitutional right if you claim that as your privilege.

THE WITNESS: I claim my constitutional right as a privilege, and do not care to answer that question.

Mr. GROSVENOR: Were you present at a meeting in
3 Pittsburgh, in April, 1910, at which Mr. Wayman and other defendants in this case were present?

Mr. NOBLE: I advise you that is one of the meetings which the Government alleges, and about which it has shown some evidence that it was an unlawful meeting, and which constitutes a part of the alleged offense for which you were indicted in Detroit. Accordingly, on the grounds previously stated, you may claim your right not to answer.

THE WITNESS: I claim my right again, and do not care to answer.

4 Mr. GROSVENOR: That is on the ground that it will tend to incriminate you?

Mr. NOBLE: On the ground that it might tend to incriminate him.

BY MR. GROSVENOR:

Q. Was your company a member of this association of enameled iron ware manufacturers?

THE WITNESS: You mean the association that existed some time in the past?

Mr. GROSVENOR: That existed in the years 1909 and 1910? 1

A. Yes, sir.

Q. Mr. Walker, your counsel, Mr. Noble, read certain allegations from the Government's petition on page 16 or stated the gist of them. I wish to cross examine you in respect to these. On page 16 this statement is made: "before the assignments were made all the defendants had "agreed upon all the essential features of the licensing ar-"rangement." Were any of the terms of the license agreement which you entered into with Wayman discussed at a meeting in April at which you, Wayman and other defendants were present, the meeting being in Pittsburgh? You don't have to wait for counsel— 2

Mr. NOBLE: Yes, Mr. Walker, you have to wait until I object.

Mr. GROSVENOR: Your privilege is a personal one and rests entirely with you.

Mr. NOBLE: I object to the question on the ground that it is not cross examination. I asked the witness no question about any meeting in April or any other meeting. Mr. Walker, I advise you that you need not answer, therefore, as to the meeting in April about which the Government is inquiring. 3

THE WITNESS: I do not care to answer.

Mr. GROSVENOR: On what ground?

Mr. NOBLE: The form in which you take your personal privilege is that it might tend to incriminate you. Say that.

THE WITNESS: On the ground that it might tend to incriminate me.

Q. Now, at this meeting on May 6th, in New York, were any of the essentials of the licensing agreement, either of the manufacturers with Wayman, or of the jobbers with the manufacturers, in regard to the price list—that is, Wayman's price list—were any of those features discussed at this May meeting in New York? 4

Mr. NOBLE: I advise you that is not proper cross examination, and I object on that ground, and state that if the Government desires an answer to that question it may apply to the Court for instructions

requiring you to answer, and until you receive those instructions you may decline to answer that question, because the Government alleges that meeting had to do with an unlawful contract or conspiracy for which you were sued in Baltimore and indicted in Detroit?

THE WITNESS: On the grounds which Mr. Noble stated, I refuse to answer.

Q. That it will incriminate you?

A. That it might tend to incriminate me.

Q. This part of the Petition continues: "They"—that is the defendants—"had determined upon all the principal "terms and conditions of the contracts to be entered into by "the manufacturers with Wayman, ostensible licensor." Now, prior to this meeting in May, had you discussed with Wayman the terms and conditions of the contract which the various manufacturers were to enter into with Wayman?

Mr. NOBLE: I object to the question on the ground that the witness testified in his direct examination that he never had conferred with any of the defendants, other manufacturers, as to these terms; that is, that the entire discussion was with Mr. Wayman. Therefore, it is improper cross examination.

THE WITNESS: On the ground that it might tend to incriminate me, I do not care to answer.

Q. Now, it continues: "They had determined upon the "jobbers' licensing agreements." Now, prior to this meeting of May 6th, 1910, in New York City, had you considered forms or proposed forms of a jobbers' license agreement to be entered into by you with your customers, such forms being sent to you by Wayman?

THE WITNESS: Prior to May.

Mr. NOBLE: Prior to May 6th?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. NOBLE: I object to the question because of the presence of the words "this meeting of May 6th"; if it is merely to fix a date and not to ask the witness to testify to any meeting, then I do not object. I call upon the counsel for the Government to state the purpose of the question.

Mr. GROSVENOR: Read the question again.

Stenographer then read the question referred to. 1

Mr. GROSVENOR: I think the question is clear. Will you answer it?

Mr. NOBLE: Do you mean merely to fix a date by the words "this meeting of May 6, 1910, in New York City?"

Mr. GROSVENOR: The question stands as I asked it. Will you answer it?

Mr. NOBLE: Then I object to the witness answering any question which involves a covert attempt on the part of the Government to get the witness to testify to a meeting which the Government contends was unlawful, in the hope that he may testify to something that would incriminate him. 2

THE WITNESS: On the ground that it may tend to incriminate me, I decline to answer.

Q. This continues: "They had determined upon the resale prices at which the jobbers should sell in interstate commerce to the plumbers, retailers and consumers." Did you ever have any discussion with Wayman, prior to the entering into of this license agreement with him by your company, as to the resale prices which you and the other manufacturers should observe? 3

Mr. NOBLE: I object to the question on the ground that the witness has already testified that his conversation with Mr. Wayman and his conferences in respect to this matter were solely in respect to his company, and that it is an attempt to ask the witness to testify as to other manufacturers and is not cross examination.

THE WITNESS: On the ground that it may tend to incriminate me, I decline to answer.

Mr. NOBLE: Counsel for witness states that as to any of these questions which counsel for Government is asking the witness, he may apply to the Court for an order requiring an answer, if he desires to do so. 4

Q. The Petition continues "They"—the defendants—"had agreed upon a price list wherein was stated all the ar-"ticles of sanitary enameled iron ware made by all of the "defendants, and in which were specified the prices at which "those articles should be sold by the defendants throughout "the United States, and the resale prices which jobbers

"should observe in making sales of the same articles to their "customers." Was this price-list herein referred to discussed at any meeting in May in New York? I refer to the meeting at which the evidence shows your agreement was entered into with Wayman.

Mr. NOBLE: I advise the witness that this alleged meeting is one of the meetings which it is claimed by the Government was unlawful, and for which he is sued in Baltimore and indicted in Detroit. Furthermore, I object to the question on the ground that it is not cross-examination, since the meeting referred to, alleged to have taken place by counsel for the Government, was not referred to in the direct examination of the witness, but I advise counsel for the Government that if he desires an answer to the question he may apply to the Court for instructions to the witness.

THE WITNESS: I decline to answer on the ground that it might tend to incriminate me.

Examination concluded; signing of deposition waived by agreement of counsel for the respective parties.

ANTON WEISKITTEL, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business?
A. Enameled iron ware manufacturer?
Q. Where do you reside? A. Baltimore.
Q. How did you happen to be in Pittsburgh today?
A. I got a telegram on Saturday to come here for a conference.
Q. From Mr. Noble?
A. Yes, sir, from Mr. Noble; yes, sir.
Q. Where is that telegram?

Mr. GROSVENOR: That is already in evidence. You have been present here most of the day, and probably have heard what I said to the other defendant witnesses. I hope you understand the position of the

Government in this matter—that is to say, you are a defendant in both the civil and criminal suits, and the same matters are involved in each, and if you testify here in the civil case, it may be material in the criminal case, so you may rely on your privilege under the Fifth Amendment to the Constitution, and refuse to answer. If you do testify and waive your constitutional privilege, then you will subject yourself to cross examination by counsel for the Government if he desires to cross examine you. I want you to know, in any event, that you must not testify here with the expectation of getting immunity by so testifying. Do I make myself clear? 1 2

THE WITNESS: Yes, sir.

Mr. HONEYMAN: Note the same objection here to the statement of counsel for the Government as was noted this morning to similar statements made to the previous witnesses.

Mr. NOBLE: Please note the same objection to the statement of counsel for the Government which I put on the Record at the close of a similar statement made to the witness, Mr. Dawes.

Mr. HEATH: And more particularly to the statement of counsel that the Government gives immunity. The witness is advised that the immunity flows from the Statute. 3

BY Mr. HONEYMAN:

Q. You were subpœnaed this morning? A. Yes, sir.

Q. You did not know before this morning that you were to be subpœnaed? A. No, sir.

Q. Your business, you say, is the iron enameled ware business? A. Yes, sir.

Q. Do you know the Colwell Lead Company? 4

A. Yes, sir.

Q. How long have you been in the enameled iron ware business? A. Fifteen years.

Q. How long have you known of the Colwell Lead Company?

A. Well, I have known of them ten to fifteen years; quite a while, anyhow.

Q. Do they buy enameled ware from you? A. Yes, sir.

1 Q. Have they bought enameled ware from you at different times in the last few years? A. Yes, sir.

Q. Do you know how long they have been manufacturing enameled iron ware themselves?

A. Well, I judge about ten years.

Q. Do you know their product? A. Yes, sir.

Q. Does it compete with your product? A. Yes, sir.

Q. To what extent?

A. Well, it is a first-class product.

Q. Do they sell to the jobbers, or to the plumbing trade?

A. They sell to the plumbing trade.

2 Q. Do they sell to jobbers? A. Not to my knowledge.

Q. If they did, would you know of it?

A. Yes, sir, I suppose so.

Q. Their competition with you is that by selling to the plumbing trade they may supply trade that otherwise would come to you? A. Yes, sir.

Q. They sell only in New York, I think you stated?

A. Yes, sir, I think so.

Q. You don't know if they sell at all to jobbers?

A. No, sir.

Q. Do you know whether they sell enameled ware

3 throughout the United States?

A. To my knowledge they do not.

Q. Do you know whether or not their business is restricted to New York?

A. I never met them anywhere except in New York.

Q. Do you know whether or not the Colwell Lead Company use the Arrott patent? A. I know they do; yes, sir.

Q. How do you know it?

A. Well, I can tell it by the class of ware that they make.

Q. What do you mean by that?

A. Well, it is a smoother ware than you can make by

4 hand.

Q. And you can tell by the appearance of the ware itself that they use the Arrott patent? A. Yes, sir.

Q. Did you ever have any conversation with anyone, or discuss with anyone, the question of licenses under the Arrott patents? A. Yes, sir.

Q. Did you ever attend any meeting of manufacturers at which the question of uniform licenses under the Arrott patent was discussed?

Mr. NOBLE: I advise you that in view of what was stated to you by the Government's counsel, under the law in such case you may decline to answer any questions which may tend to incriminate you. It is alleged by the Government in this case, and in the indictments in Detroit, that various meetings were had between the various manufacturers to fix among themselves uniform prices and other terms. I advise you that if you desire to do so, you may use your privilege and decline to answer. 1

THE WITNESS: I decline to answer.

Q. Did you ever discuss with Mr. Duryea or Mr. Tilden, or anyone connected with the Colwell Lead Company, the question of license agreements or uniform prices under the Arrott patent? A. No, sir. 2

Q. Did you ever have any agreement of any kind with the Colwell Lead Company concerning the Arrott patent, directly or indirectly? A. No, sir.

Mr. HONEYMAN: That is all.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE: 3

Q. Mr. Weiskittel did you make an answer in the civil suit filed in Baltimore? A. I filed an answer, yes.

Q. Were you subpœnaed in that case? A. Yes, sir.

Q. Did you verify your answer? A. Yes, sir.

Q. And was that Answer filed under your direction thereafter as your defense to that suit? A. Yes, sir.

Q. Will you please state the date on which you verified it? A. The 30th day of September, 1910.

Q. Do you remember whether Mr. Heise made an Answer in that case? A. I cannot say I do.

Q. He is the secretary of your company? 4

A. Yes, sir, but in my presence he did not.

Q. Were you a member of the Sanitary Enameled Ware Association, of which Mr. Wayman was at one time Commissioner? A. Yes, sir, I was.

Q. Did that association have anything to do, directly or indirectly, with the licenses which Mr. Wayman proposed thereafter to your company and to other companies, similar

to Exhibits 8 or 9 and 11, known as the "License Agreement" and "Jobbers' License Agreement."

A. No, sir.

Q. From whom did you first hear of the idea of taking a license under the Arrott patent? A. Mr. Wayman.

Q. And is your answer the same as to the other patents known as the Ditheridge patent and the Lindsay patent?

A. Yes, sir.

Q. Do you recall about when it was that Mr. Wayman brought the matter to your attention for the first time?

A. Some time in May or June.

Q. The first time at which he brought the matter to your attention was when he came to Baltimore during the early part of March? A. Yes, sir.

Q. Mr. Wayman testified that he came to see you early in March, I think March 6th? A. Yes, sir.

Q. Does that refresh your recollection as to the date?

A. Yes, sir, March, 1910.

Q. Had you ever heard of or discussed the question of licenses under patents to manufacture sanitary enameled iron ware with anyone else, until Mr. Wayman brought it to your attention? A. No, sir.

Q. Was any such thought ever suggested to you by any other manufacturer of sanitary enameled iron ware?

A. No, sir.

Q. Or among the defendants in this suit? A. No, sir.

Q. The entire suggestion came, as I understand you, from whom? A. From Mr. Wayman.

Q. The Government has alleged in their petition that you and all the other manufacturers of sanitary enameled iron ware, who were made defendants in this suit, agreed to cause the assignment, or to bring about the assignment of the Arrott, the Ditheridge and the Lindsay patents to Mr. Wayman for a nominal consideration, subject to reassignment at the expiration of a short period; as to you or the Weiskittel Company, is that statement true? A. No, sir.

Q. Is there any truth in that statement that you or the Weiskittel Company ever had anything, of any kind, sort or description, to do with bringing about the assignment of these patents upon any terms to Mr. Wayman?

A. Only to Wayman.

Q. You did not do anything, though, to cause these people to assign these patents to Mr. Wayman? A. No, sir.

Q. You did not ask these people to assign the patents to him? A. No. 1

Q. When Mr. Wayman saw you in Baltimore early in March, did he tell you that he had an option upon any of these patents?

A. Yes, sir; he told me he had an option on the patents.

Mr. GROSVENOR: I object to this as hearsay.

Q. Now, the Government alleges in its Petition that you and all of the other defendants, previous to the assignment of these patents to Mr. Wayman had agreed upon all the essential features of the licensing arrangement. I ask you whether you or the Weiskittel Company ever agreed at any time with the other manufacturers of sanitary enameled iron ware, defendants in this suit, upon the essential features, or any of the features of the license agreements, similar to Exhibits 9 and 11, being what is known here as the "License Agreement" and the "Jobber's License Agreement"? A. No, sir, we did not. 2

Q. The Government further says that all the principal terms and conditions of the contracts made by Wayman with the other manufacturers had been determined upon by the defendants. Is that true as to you or the Weiskittel Company? A. Not as to ourselves, no, sir. 3

Q. Is there any truth in it at all as to you or the Weiskittel Company? A. No, sir.

Q. The Government alleges that Mr. Wayman was an "ostensible" licensor; is there any truth, as far as the Weiskittel Company is concerned, in that allegation, and in the rest of the Bill, which alleges that Mr. Wayman was not the bona fide owner of these patents, but had a colorable title or ostensible title?

A. So far as the Weiskittel Company is concerned, we thought he owned them absolutely. 4

Q. You had no thought to the contrary? A. No, sir.

Q. Has any such suggestion ever been made to you by any of the defendants, that there was anything to the contrary?

A. No, sir.

Q. The Government alleges that before the assignment of these patents to you and all the other defendants, they had agreed upon the price list which contains all the articles of sanitary and enameled iron ware manufactured by the

1 defendants; as to you and as to the Weiskittel Company, is that statement true? A. No, sir.

Q. Is there any truth in that statement as to the Weiskittel Company and yourself? A. No, sir.

Q. Did the Weiskittel Company at any time ever have any agreement with any other manufacturers to maintain prices on sanitary enameled iron ware? A. No, sir.

Q. Or did it ever have any agreement to restrict the output? A. No, sir.

Q. Was the answer which you made, verified and filed to the suit in Baltimore, the truth at the time you made it?

2 A. Yes, sir.

Q. And is it still the truth? A. Yes, sir.

Q. Mr. Weiskittel, the Government has alleged in the indictments against you and the other defendants, and there has been some evidence offered in the civil case, that there were meetings which took place at Mount Clemens, Michigan, of various manufacturers. Were you present at any of those meetings? A. Yes—

Mr. NOBLE (interrupting): Now, I want to say to you that while you are my witness, and I want to examine you fully and get all the testimony as to

3 everything, I want to call your attention to the fact that counsel for the Government has told you that you may decline to answer on the ground that it might tend to incriminate you, and I advise you that as to your rights, you have the right to decline to answer any questions which may tend to incriminate you in this suit. I want to examine you fully and completely, but I want to tell you what your rights are. Read the question to the witness again, please.

The last question was then read by the stenographer.

4 THE WITNESS: I decline to answer that question.

Q. On what ground?

A. On the ground that it might tend to incriminate me.

Mr. NOBLE: I wish to give notice that as to this witness I desire an opportunity to examine him fully, so that his defense to this action may be fully established, and to do so without any fear on the part of

the witness that he may not testify fully and freely in defense of his rights. 1

Mr. GROSVENOR: Well, go ahead and examine him. He is on the stand.

Mr. NOBLE: When you are through I will continue my statement. Counsel for the Government has put this defendant and other defendants in the position where they may not defend their rights without the fear of testifying to facts which may be used against them in the indictments now pending in Detroit, and on behalf of this witness I protest that he has the right to give his testimony at such time and under such circumstances as will enable him to testify freely, and that that cannot be done at this time. 2

Mr. GROSVENOR: Counsel for the Government suggests that the witness is on the stand and can be examined now, if his counsel is as anxious as the statement makes him appear to be. Are you through now?

Mr. NOBLE: I have gone as far as I can without going into matters similar to those covered by the question which I have asked the witness. There are many other matters concerning which I would like to examine this witness, concerning matters about which I started to inquire and subsequent thereto. 3

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Weiskittel, you were subpœnaed for the Colwell Lead Company in the court room, were you not?

A. This morning; yes, sir.

Q. In this court room? A. Yes, sir.

Q. In this room? A. Yes, sir.

Q. How did you happen to come here?

A. I came here through a telegram which I received in Baltimore on Saturday. 4

Q. That is the reason you came to Pittsburgh, you say?

A. Yes, sir.

Q. How did you happen to come to the court room?

A. I just came here.

Q. Why did you come here?

A. Well, I am naturally interested in this case, and I just came here to hear the testimony.

Q. Who told you there would be a hearing here?

A. I knew there would be a hearing here today.

1 Q. Did counsel ask you to come here? A. No, sir.

Q. You received this telegram (indicating Petitioner's Exhibit No. 285)? A. Yes, sir.

Q. At the time you first started to take the stand this morning, then you had not been subpœnaed, had you?

A. No, sir.

Q. Then Mr. A. C. Walker took the stand instead of you?

A. Yes, sir.

Q. You then went back to your seat, and that is the time you were subpœnaed; is that right?

A. Yes, sir; that is right.

2 Q. Did your counsel or anyone tell you that a subpœna would be served upon you if you waited a little while?

A. No, sir.

Mr. NOBLE: I told Mr. Weiskittel that I objected to his going on the stand to testify at the request of the Colwell Lead Company's counsel unless they subpœnaed him in the case, and I directed him not to do so.

BY Mr. GROSVENOR:

Q. On your direct examination Mr. Noble asked you
3 about a meeting that you had with Mr. Wayman in March?

A. Yes, sir.

Q. Which was where? A. In Baltimore?

Mr. HONEYMAN: This witness was subpœnaed by me, and put on the stand by the Colwell Lead Company, on direct examination. So far as the examination of Mr. Noble is concerned, I have nothing to do with that, and I want to state that Mr. Noble's examination of the witness had nothing to do with the Colwell Lead Company. I remained silent during the
4 examination of these witnesses by Mr. Noble because I understood that Mr. Noble had some questions to ask them on his own account. I am not taking part in Mr. Noble's examination in any way.

BY Mr. GROSVENOR:

Q. You testified in answer to Mr. Noble's question that you at that time discussed with Mr. Wayman the entering into of a license agreement with him? A. Yes, sir.

Q. You also testified on direct examination that you had

no agreement with the other defendants, or any of them, respecting the entering into of a license agreement? 1

A. Yes, sir.

Q. Now, did Mr. Wayman tell you at this meeting in Baltimore that other manufacturers of sanitary enameled iron ware were contemplating entering into a license agreement with him?

Mr. NOBLE: I object to that. Counsel is putting words into the witness' mouth. If counsel desires to know what Mr. Wayman said to Mr. Weiskittel, let him ask such a question as will elicit such facts.

Mr. GROSVENOR: Read the question, please. 2

The stenographer then read the last question.

A. Well, Mr. Wayman tried to get us to enter into this arrangement. What other arrangement he had, I do not know.

Q. You knew he was trying to get other manufacturers to enter into the agreement, did you not?

A. I knew he was the owner of the patents.

Mr. GROSVENOR: Read him the question.

The stenographer then read the last question.

THE WITNESS: I suppose he was; I don't know that. 3

Q. From that time, Mr. Weiskittel, in March, up until May, you knew that the other manufacturers, or a large part of them, were considering entering into a licensing agreement with Wayman?

Mr. NOBLE: I object to the question, first, because it is not proper cross examination, and secondly, because the Government alleges in its Bill, and has offered some evidence to show, that there were meetings which they claim to have been illegal. They allege in the indictments in Detroit that there were 4 various meetings and conferences which they claim were illegal and unlawful. I therefore notify the witness that in view of the statement of counsel for the Government, made when he took the stand, and the law in such cases, that he may decline to answer any questions covered by the indictments in Detroit which may tend to incriminate him. You may decline to answer on that ground.

1 THE WITNESS: I decline to answer the question on the ground that it might tend to incriminate me.

Mr. GROSVENOR: That is all.

Mr. HONEYMAN: The witness having refused to answer questions put to him by the counsel for the Colwell Lead Company, we now want to reserve our right to recall him after we get the decision from Judge Holland. We are foreclosed in our defense unless he is compelled to answer those questions.

Mr. NOBLE: I will produce him when you require him, unless you want him to wait around.

2 Mr. HONEYMAN: Well, that might require quite a long wait.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

GEORGE W. FRANZHEIM, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

3 Mr. GROSVENOR: Mr. Franzheim, you have been here the larger part of the day, and I think you have heard the statements that I have made to the respective witnesses as to their rights to refuse to answer, and that if they do answer questions they will subject themselves to cross examination by counsel for the Government, and you, not being called by the United States, must not give testimony with the belief that you will be afforded immunity thereby.

4 Mr. NOBLE: I object to the statement of counsel for the Government made to this witness for the same reasons as stated in my objection made after a similar statement to the witness Dawes.

Mr. HONEYMAN: Note the same objection on behalf of the Colwell Lead Company to the statement made by counsel for the Government.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business, please. A. Promoter.

Q. You were in the business of the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Up to what time? A. March 15, 1911.
Q. What company were you connected with? 1
A. The Wheeling Sanitary Manufacturing Company.
Q. Is that the company named as the Wheeling Enameled Iron Company of Wheeling, West Virginia?
A. That is the company which finally succeeded to it.
Q. You are the defendant in this proceeding in equity and in the indictments in Detroit? A. Yes, sir.
Q. Were you in the sanitary enameled iron ware business in 1908 and '09 and up until March, 1911?
A. Yes, sir, I was.
Q. You are familiar with the general trade conditions and general trade information in the enameled iron ware business? A. Yes, sir. 2

Mr. GROSVENOR: He is a promoter.
Mr. HONEYMAN: Since March, 1911.

Q. How long were you with the Wheeling Sanitary Manufacturing Company? A. From November, 1905.
Q. From November, 1905, to March, 1911, you were in the enameled iron ware business? A. Yes, sir.
Q. And since March, 1911, you have been a promoter?
A. Yes, sir.
Q. While you were with the Wheeling Sanitary Manufacturing Company you were familiar with general trade matters? A. Yes, sir. 3
Q. What were your duties with that company?
A. Secretary and treasurer.
Q. Did you know the Colwell Lead Company?
A. I have heard of them.
Q. Do you know their business?
A. I understood they sold enameled iron ware.
Q. Where do you live? A. Wheeling, W. Va.
Q. Do you know anything of the character of the business of the Colwell Lead Company in a general way? 4
A. I always understood that they were very small manufacturers selling direct to the plumbing trade.

Mr. GROSVENOR: I make the same objection as I made to the first of this class of witnesses, that they were not the proper witnesses to call to examine on questions of this kind relating to the Colwell Lead Company. This is not a proper witness to establish

1 what the character of the business of the Colwell Lead Company is.

Mr. HONEYMAN: Well, we have the testimony of the Colwell Lead Company, and of all the other manufacturers in the trade.

Q. Did you ever meet them as competitors in sales to jobbers throughout the United States? A. Never.

Q. Do you know as a matter of general knowledge, that the Colwell Lead Company have agencies throughout the United States, and sell generally throughout the United States? A. Not to my knowledge, no.

2 Q. If they did, would you be apt to know of it?

A. Probably.

Q. Did you ever have any conversation or discussion with any one concerning the licensing under the Arrott patent?

A. None whatever.

Q. Did you ever have any conversation of any kind, character or description, with Dr. Duryea, or Mr. Tilden, or anyone representing the Colwell Lead Company on the subject of the Arrott patents? A. None whatever.

Q. Or on the subject of any uniform license agreements?

A. None whatever.

3 Q. Or on the subject of the maintenance of prices?

A. None whatever.

Q. Did you ever have any agreement or understanding, express or implied, of any kind, character or description, with the Colwell Lead Company, or anyone representing it, on the subject of maintenance of prices, or anything which would amount to a restraint of trade in any way, shape or form? A. Never.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

4 Q. Mr. Franzheim, you spoke of several companies. Will you please explain that remark. The company which is a defendant in the petition in Baltimore, filed in the Circuit Court for the District of Maryland, is the Wheeling Enameled Iron Company. Now, were you an officer of that company? A. Yes, sir.

Q. What was your office? A. Secretary.

Q. Were you a director in that company? A. No, sir.

Q. What company succeeded that company?

A. The American Sanitary Manufacturing Company.

Q. Were you an officer of that company? 1

A. The secretary.

Q. Were you a director of that company? A. No, sir.

Q. What company succeeded the American Sanitary Manufacturing Company just named?

A. The Wheeling Sanitary Manufacturing Company.

Q. And that is the present company which you said succeeded the Wheeling Enameled Iron Company? A. Yes, sir.

Q. Are you connected with that company in any way?

A. No, sir.

Q. Have you been? A. Yes, sir.

Q. What was your relationship to that company? 2

A. I was the superintendent of the enameled iron department.

Q. Were you an officer of it? A. No, sir.

Q. Did these various companies transfer their assets, one to the other? A. Yes, sir.

Q. When did that take place as to the Wheeling Enameled Iron Company, approximately, I mean.

A. May 8, 1910.

Q. When did the American Sanitary Manufacturing Company transfer its property to the Wheeling Sanitary Manufacturing Company, approximately? 3

A. Well, about October, 1910.

Q. Did you have anything at all to do with the license agreement from Mr. Wayman to the Wheeling Enameled Iron Company? A. Nothing whatever.

Q. Did you ever discuss that with Mr. Wayman?

A. Never.

Q. Did you ever discuss it with any other manufacturer of sanitary enameled iron ware among the defendants in this action? A. No, sir, not at all.

Q. Were you a member of the Board of Directors of that company? A. No, sir. 4

Q. Was the matter ever brought to the attention of the Board of Directors? A. No, sir.

Q. How did you first learn of the granting of the license by Mr. Wayman to the Wheeling Enameled Iron Company?

A. Why, Mr. Wright mentioned it in an offhand way.

Q. And that is the first you knew of it?

A. Yes, sir, so far as I know.

Q. That was the only knowledge you had of it up to that time? A. Yes, sir.

Q. You were indicted up in Detroit, were you not?

A. As far as I know, I am.

Q. You are one of the defendants in this civil suit brought in the Circuit Court for the District of Maryland?

Q. As far as I know I am.

Q. Did you ever attend any meetings of manufacturers where this license agreement was discussed?

A. No, sir; never.

Q. Did you ever attend any meeting of manufacturers, formal or informal, at which it was discussed—

A. (Interrupting): None whatever.

Q. Or at which the maintenance of prices or the restriction of the output was discussed? A. None whatever.

Q. And your entire knowledge, as I understand you, of this so-called illegal act, comes from the information which Mr. Wright gave you and the fact that you are sued and indicted? A. That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. The Wheeling Enameled Iron Company was the first named? A. Yes, sir.

Q. That company transferred its assets to the American Sanitary Manufacturing Company? A. Yes, sir.

Q. And that company transferred them to what company?

A. To the Wheeling Sanitary Manufacturing Company.

Q. What happened to the contracts of the Wheeling Enameled Iron Company—did they go over to the American Sanitary Manufacturing Company?

Mr. NOBLE: If you know?

A. As far as my knowledge goes, I should think they did.

Q. So the Wheeling Sanitary Iron Company stands today in the place of the Wheeling Enameled Iron Company?

A. The Wheeling Sanitary Manufacturing Company stands today in the place of the Wheeling Enameled Iron Company.

Mr. GROSVENOR: That is all.

Mr. NOBLE: I request the Government to note a discontinuance of this suit as against Mr. Franzheim.

Mr. GROSVENOR: That is all for this witness.

Mr. NOBLE: Will the Government please answer my

question? My request is for a discontinuance of this suit as against Mr. Franzheim. 1

Mr. GROSVENOR: That is all for this witness. There is no occasion for answering questions of that sort at this time.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM ALBERT MYLER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 2

Mr. GROSVENOR: Mr. Myler, you have been in court the greater part of the day—

THE WITNESS: Yes, I understand.

Mr. NOBLE: I make the same objection to the admonition of counsel for the Government to the witness as I stated previously as to the other witnesses.

Mr. HONEYMAN: Note the same objection to the statement of counsel as I made to the statement made to the previous witnesses.

DIRECT EXAMINATION BY Mr. HONEYMAN: 3

Q. Mr. Myler, you understand that the Colwell Lead Company is seeking with your testimony to establish their separate defense to this equity suit? A. I do.

Q. You understand, do you not, that their situation is materially different from the other defendants in this suit, and that their answer sets forth materially different facts?

A. Yes, sir.

Q. You understand also that unless the Colwell Lead Company can establish its defense by evidence, it is in an unfair position, do you not? A. Yes, sir. 4

Q. I will ask you in all decency and justice to help us to eliminate all the charges made against the Colwell Lead Company, regardless of any advice of counsel for the Government. State your business?

A. I am secretary and treasurer of the Standard Sanitary Manufacturing Company.

Q. How long have you been in that business and position?

A. I have been secretary since the organization of the company; secretary and treasurer for about nine years.

1 Q. And you are familiar with the enameled iron business?
A. I should be.
Q. Do you know the Colwell Lead Company?
A. Yes, sir, and have for a number of years.
Q. Do they buy enameled iron ware from your company?
A. They do.
Q. And you have known of them for a good many years?
A. Yes.
Q. Do you know generally their business? A. Yes, sir.
Q. What is it? A. Jobbers of plumbing supplies.
Q. Among other things are included enameled iron ware?
2 A. Yes, sir, that is included.
Q. What they buy from your company is enameled iron ware? A. Yes, sir.
Q. You do not make anything else? A. Yes, sir; we do.
Q. But the Colwell Lead Company buy only enameled iron ware from you?
A. So far as I know they only buy enameled iron ware.
Q. Do you know whether or not the Colwell Lead Company sell to jobbers or to plumbers?
A. I always understood they sell to plumbers only.
Q. Did you ever hear of their selling to jobbers?
3 A. I never have.
Q. If they sold to jobbers to any extent, would you know of it?
A. I should; yes, sir. I don't think they could without my knowing of it.
Q. Is the allegation of the Government true that the Colwell Lead Company had agents throughout the United States and sold to the jobbers as well as the plumbers?
A. I should say not.
Q. Do you know whether or not the Colwell Lead Company sells outside of New York City?
4 A. I never heard of them selling outside of New York City.
Q. If they did to any extent, would you know of it?
A. Yes, sir.
Q. Did you ever discuss with anyone, or talk with anyone about the licenses under the Arrott patent? A. Yes, sir.
Q. Did you ever discuss with any manufacturers at any meeting of manufacturers, in Detroit or at any other place, the question of uniform licenses under the Arrott patent?

A. I must decline to answer that question on the ground that it may have a tendency to incriminate me. 1

Mr. GROSVENOR: I fail to see the purpose of the question, because the witness testified that he had no conversation with any of the Colwell Lead people in regard to this matter.

Mr. HONEYMAN: I don't think he did.

Q. Were you present at the meetings in Michigan in April, 1910?

A. I must decline to answer that question on the same ground. 2

Q. Was any representative of the Colwell Lead Company present at any of those meetings?

Mr. NOBLE: You may decline to answer that question on the ground that it may tend to incriminate you.

THE WITNESS: I decline to answer that question on the ground that it may tend to incriminate me.

Q. Did you ever at any time or place have any conversation with any representative of the Colwell Lead Company on the subject of a license under the Arrott or any other patent? A. No, sir. 3

Q. Did you at any time have any agreement or understanding, express or implied, with the Colwell Lead Company, or with any agent or representative of the Colwell Lead Co. on the subject of the maintenance of prices? A. No.

Q. Or on any subject which might in any way tend to restrain trade or commerce at all? A. No, sir.

Mr. HONEYMAN: That is all, with the exception of reserving my right to compel the witness to answer.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE: 4

Q. How many years have you been in the sanitary enameled iron ware business? A. Since 1878.

Q. Are you here under a subpœna? A. I am.

Q. Do you know at whose request it was issued?

A. I really do not.

Q. Have you a copy if it with you? A. No, sir; I have not.

Q. Where did you leave it, at your office?

A. That is where it was served on me.

1 Q. Mr. Myler, are you one of the defendants in this suit, which is brought against the Standard Sanitary Manufacturing Company, and others, in the Circuit Court of the United States for the District of Maryland?

A. I understand that I am.

Q. Are you also one of the defendants who were indicted in Detroit? A. Yes, sir; I am.

Q. It has been stated here by counsel for the Government that the subject-matter and the matters, transactions and things complained of as illegal in the civil suit and in the indictments found on or about December 7, 1910, in Detroit,
2 are the same. Do you understand that to be the fact?

A. Yes, sir.

Q. Did you make an answer in the civil suit filed in the Circuit Court in Baltimore? A. Yes, sir.

Q. And was that made pursuant to a subpœna in that case? A. Yes, sir.

Q. Did you verify that answer? A. I did.

Q. Will you please tell me the date upon which you verified it? A. The 1st day of October, 1910.

Q. Was that answer filed in Baltimore or did you direct that it be filed in your defense?

3 A. Yes, sir; I understood that it would be.

Q. Was what you said in that answer true at that time?

A. It certainly was.

Q. And is it true today? A. Yes, sir; it is.

Q. The Government has alleged, Mr. Myler, that you, the Standard Sanitary Manufacturing Company, and various other defendants, named in the suit in the Circuit Court for the District of Maryland, agreed upon a uniform method of selling your products in sanitary enameled iron ware to jobbers. Now, I ask you whether the Standard Sanitary Manufacturing Company ever agreed with any other manufacturer,
4 or whether you individually or any of the officers of the Standard Company, within your knowledge, ever agreed with any other manufacturers to maintain prices or to restrict output except in the license from Mr. Wayman?

THE WITNESS: That answer might incriminate me as well as the others, and I decline to answer.

Q. The agreement to which I referred as the agreement with Mr. Wayman, was the agreement shown in Petitioner's Exhibit No. 9 and known as the "License Agreement"

and that shown in Petitioner's Exhibit No. 11 and known as the "Jobber's License Agreement." Now, I ask you if you or the Standard Sanitary Manufacturing Company ever made any other agreements than ones similar to those, relative to prices upon sanitary enameled iron ware, or which embodied any terms in respect thereto? A. No, sir; I did not. 1

Q. Now, the Government alleges that the Standard Sanitary Manufacturing Company, you and all the other defendants named in this petition agreed with each other and among yourselves that the Standard Sanitary Manufacturing Company, the L. Wolff Company and the J. L. Mott Company should assign certain patents over to Mr. Wayman for a short term and subject to reassignment on the payment of a nominal consideration, so that Mr. Wayman, as an "ostensible licensor" might license the various manufacturers under those patents. Will you please tell me whether, for you or for the Standard Sanitary Manufacturing Company, you ever had such an agreement with other manufacturers? 2

A. None.

Q. Is there any truth in that statement as to you and the Standard Sanitary Manufacturing Company?

A. None whatever.

Q. Now, the Government alleges various things in its bill, but the ones I am asking you about are the principal ones, as I conceive it, that before the assignments of these patents, which I have mentioned, were made, all of the defendants—that means you, all of the officers of the Standard Sanitary Manufacturing Company and all the other manufacturing companies, and their officers—had made an agreement among themselves upon all the essential features of the license, calling it a licensing arrangement? 3

A. That is untrue.

Q. Is there any truth in that statement? A. No, sir.

Q. They say further that you and the other manufacturers had determined upon all the principal terms and conditions of the contracts to be entered into by Wayman, whom they say was an "ostensible licensor" merely with the other manufacturers. Is there any truth in that statement? 4

A. I don't think there is, sir.

Q. Is there any truth in it so far as you are concerned or know? A. No, sir; not so far as I know.

Q. Testifying, then, for yourself, what have you to say?

A. There is no truth in it.

1 Q. If the Standard Sanitary Manufacturing Company had been a party to any such agreement as that, wouldn't you have known about it? A. I should have.

Q. You are a member of the Board of Directors?

A. Yes, sir.

Q. And of the executive committee? A. Yes, sir.

Q. And Secretary and Treasurer? A. Yes, sir.

Q. And come in daily contact with the other officers of the company? A. Yes, sir.

Q. Well, was any such thought suggested? A. No, sir.

Q. The Government alleges similarly that the prices at
2 which goods should be sold, and the resale prices at which they should be sold by the jobbers to the plumbers were agreed upon by the manufacturers, that is by you and the Standard Sanitary Manufacturing Company and the other companies before these assignments were made. Is there any truth in that statement? A. Not a word.

Q. Was there ever any agreement, as far as you know, between the Standard Sanitary Manufacturing Company or any of its officers and these other manufacturers or their officers, to maintain prices on sanitary enameled iron ware goods?

3 THE WITNESS: As manufacturers?

Mr. NOBLE: Yes, that is, to have a price list, an agreement between the manufacturers?

A. No, sir.

Q. Now, they make a resume here and say: "This price list, arrived at by agreement and consultation between the defendants and without competition between them, fixes the price which every user of sanitary enameled iron ware must pay," etc. Now, I ask you did you agree with these other manufacturers upon the prices that are set out in that price
4 list? A. No, sir.

Q. So far as you knew, did the Standard Sanitary Manufacturing Company or any of its officers?

A. They did not, to my knowledge.

Q. And as far as you know, was there any such agreement between the rest of the manufacturers?

A. No, sir; I knew of the arrangement after it was published, because I was not consulted; I was told that was Mr. Wayman's business, not mine.

Q. From whom did you first hear of this license which

Wayman subsequently embodied into the form of Petitioner's Exhibits Nos. 9 and 11, called the "License Agreement" and the "Jobber's License Agreement?" 1

A. I presume through Mr. Torrance.

Q. Did Mr. Wayman subsequently say anything to you about it? A. No, sir.

Q. Now, there have been questions asked you here about various meetings of the manufacturers. I would like to know whether you attended the meeting at Mt. Clemens?

A. I must decline to answer that on the ground that it may tend to incriminate me.

Mr. NOBLE: I desire to give notice that I wish to continue the examination of this witness at such time as I can do so and examine him fully and freely with respect to all the issues and the evidence which has been given in this case, without fear on his part that the transactions, matters and things concerning which I may ask him questions, and which are also the matters and things and transactions laid in the indictments found in Detroit about December 7th, 1910, can be inquired into freely. The statement of counsel for the Government and the privilege claimed by the witness make it impossible for me to fully set out the defense of this witness and of the Standard Sanitary Manufacturing Company, with which he is connected, as can be done by examining him freely with respect to all the matters, transactions and things concerning which evidence has been given or may be given in this suit. It is unfair that this witness should not have an opportunity to defend his rights freely and fully, and that position is brought about by the Government insisting upon the testimony in this case being closed previous to the disposition of the cases in Detroit. Further, if this witness at a subsequent time, shall be ordered to answer by the Court I will desire to continue his examination at that time. 2 3 4

Mr. GROSVENOR: The witness is the client of counsel who has just spoken and counsel for the Government will be perfectly willing to attend any hearing at any time, night or day, within the time which his counsel has to complete his case under the order of the Court.

1 Q. If the Standard Sanitary Manufacturing Company had been a party to any such agreement as that, wouldn't you have known about it? A. I should have.

Q. You are a member of the Board of Directors?

A. Yes, sir.

Q. And of the executive committee? A. Yes, sir.

Q. And Secretary and Treasurer? A. Yes, sir.

Q. And come in daily contact with the other officers of the company? A. Yes, sir.

Q. Well, was any such thought suggested? A. No, sir.

Q. The Government alleges similarly that the prices at
2 which goods should be sold, and the resale prices at which they should be sold by the jobbers to the plumbers were agreed upon by the manufacturers, that is by you and the Standard Sanitary Manufacturing Company and the other companies before these assignments were made. Is there any truth in that statement? A. Not a word.

Q. Was there ever any agreement, as far as you know, between the Standard Sanitary Manufacturing Company or any of its officers and these other manufacturers or their officers, to maintain prices on sanitary enameled iron ware goods?

3 THE WITNESS: As manufacturers?

MR. NOBLE: Yes, that is, to have a price list, an agreement between the manufacturers?

A. No, sir.

Q. Now, they make a resume here and say: "This price list, arrived at by agreement and consultation between the defendants and without competition between them, fixes the price which every user of sanitary enameled iron ware must pay," etc. Now, I ask you did you agree with these other manufacturers upon the prices that are set out in that price
4 list? A. No, sir.

Q. So far as you know, did the Standard Sanitary Manufacturing Company or any of its officers?

A. They did not, to my knowledge.

Q. And as far as you know, was there any such agreement between the rest of the manufacturers?

A. No, sir; I knew of the arrangement after it was published, because I was not consulted; I was told that was Mr. Wayman's business, not mine.

Q. From whom did you first hear of this license which

Wayman subsequently embodied into the form of Petitioner's Exhibits Nos. 9 and 11, called the "License Agreement" and the "Jobber's License Agreement?" 1

A. I presume through Mr. Torrance.

Q. Did Mr. Wayman subsequently say anything to you about it? A. No, sir.

Q. Now, there have been questions asked you here about various meetings of the manufacturers. I would like to know whether you attended the meeting at Mt. Clemens?

A. I must decline to answer that on the ground that it may tend to incriminate me.

Mr. NOBLE: I desire to give notice that I wish to 2 continue the examination of this witness at such time as I can do so and examine him fully and freely with respect to all the issues and the evidence which has been given in this case, without fear on his part that the transactions, matters and things concerning which I may ask him questions, and which are also the matters and things and transactions laid in the indictments found in Detroit about December 7th, 1910, can be inquired into freely. The statement of counsel for the Government and the privilege claimed by the witness make it impossible for me to fully set out the defense 3 of this witness and of the Standard Sanitary Manufacturing Company, with which he is connected, as can be done by examining him freely with respect to all the matters, transactions and things concerning which evidence has been given or may be given in this suit. It is unfair that this witness should not have an opportunity to defend his rights freely and fully, and that position is brought about by the Government insisting upon the testimony in this case being closed previous to the disposition of the cases in Detroit. Further, if this witness at a subsequent time, shall 4 be ordered to answer by the Court I will desire to continue his examination at that time.

Mr. GROSVENOR: The witness is the client of counsel who has just spoken and counsel for the Government will be perfectly willing to attend any hearing at any time, night or day, within the time which his counsel has to complete his case under the order of the Court.

1 Mr. HONEYMAN: The Colwell Lead Co. has no objection to Mr. Noble calling this witness as a witness on his behalf at any time that he sees fit. This witness was brought here at the expense of the Colwell Lead Company. We do not expect to bring the witnesses back for further examination by Mr. Noble, but only if the Court orders him to answer these questions.

Mr. GROSVENOR: I suppose Mr. Noble can produce his witnesses at any time that he sees fit.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Mr. Myler, you are not engaged in the selling end of the business, are you?

A. Yes and no. Mr. Torrance has charge of the sales of our business, and I am called in to consult with him quite frequently.

Q. Your main business is that of treasurer of the company? A. Secretary and treasurer; yes, sir.

Q. You do not fix the terms upon which the goods are sold to your customers? A. Yes, I do.

Q. Who told you that it was Wayman's business—you said on your examination by Mr. Noble that when this matter
3 was first brought to your attention and you objected to it some one said to you: "Well, that is Wayman's business." Who said that to you?

A. That was after the agreement had been signed and the prices had been published by Mr. Wayman. It was some time after that, when I got into some of the questions, that I objected to some of the arrangements and some of the prices.

Q. That was the first time you heard of it? A. Yes, sir.

Q. Now, who was it told you this? A. Mr. Torrance.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

4 Q. In reply to a question by counsel for the Government, Mr. Grosvenor, when you said that that was the first time you heard of "it", to what did you refer? A. The price list.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What were the features that you objected to?

A. Some of the freight arrangements and some of the prices in some of the territories.

Q. Those were the only features that you found objectionable? A. Yes, sir. 1

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWIN L. DAWES, a witness heretofore produced and sworn on behalf of the Colwell Lead Company, recalled for further examination, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Dawes, what became of your correspondence with the Colwell Lead Company which you had in your files? 2

A. All has been passed over to counsel, sir, as far as I know.

Q. Have you made an examination for it lately?

A. Made searches for it in the last week.

Q. And so far as your letters to the Colwell Lead Company and your letters received from them are concerned, you have turned all of them over to your counsel? A. Yes, sir.

Q. You have no recollection of turning those particular letters over to counsel, have you? A. No, sir.

Q. Just generally—

A. (Interrupting): Just turning over all correspondence pertaining to the subject. 3

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS:

BY Mr. NOBLE:

Q. Did you attend the meeting which took place on the 29th and 30th of March at the Hotel Astor, in 1910?

A. I will have to decline to answer that question for fear that it might tend to incriminate me in the criminal proceedings.

Mr. NOBLE: I give the same notice as to this witness as I gave as to the others. 4

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Before you just went on the stand did counsel tell you that he would ask you that question if you took the stand.

Mr. NOBLE: I object to any such question.

GOVERNOR LYON: Don't answer the question; it is impertinent.

THE WITNESS: I decline to answer.

Q. I mean by counsel, did Mr. Noble tell you that he would ask you that question if you would take the stand?

Mr. NOBLE: I object to the question as impertinent. There is no occasion for the witness to tell what took place between him and counsel.

THE WITNESS: I decline to answer.

Q. You were sitting over there (indicating) and Mr. Noble said certain things to you and then Mr. Honeyman called you and asked you certain questions, and then Mr. Noble asked you that question.

Mr. HONEYMAN: Mr. Honeyman called the witness to locate certain correspondence and furnish a basis for secondary proof.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

THE WITNESS: I decline to make any reply to you.

Q. Did your personal counsel, Ex-Gov. Lyon, state that question would be addressed to you if you were put on the stand?

A. I decline to make any reply.

Mr. GROSVENOR: That is all.

Examination concluded and signing of deposition waived by agreement of counsel for respective parties.

Mr. NOBLE: I would now like to take an adjournment until 10:30 tomorrow morning.

Mr. GROSVENOR: All right.

At this point the taking of evidence was adjourned until the following morning at 10:30 o'clock, at the same place.

Volume IV.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 988.

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

TESTIMONY FOR DEFENDANTS AND EXHIBITS.

FILED FEBRUARY 16, 1912.

(23,064)

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

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IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburgh, Pa., Post Office Building,

April 18, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the defendant, the Colwell Lead Company, was resumed at 10:30 o'clock A. M., at the same place, before C. John Beeuwkes.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
ROBERT B. HONEYMAN, Esq.,
on behalf of the Colwell Lead Company.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., *et al.*
RUSSELL T. MACFALL, Esq.,
on behalf of the Union Sanitary Mfg. Co., L. C. Huesmann and E. V. Brigham.
EX-GOVERNOR WALTER LYON,
on behalf of Mr. Dawes and Mr. Myler.

JOHN E. WRIGHT, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

Mr. GROSVENOR: Mr. Wright, before they begin to examine you, I believe you were here the greater part of yesterday, and it may not be necessary for me to make the same remarks to you that I made to the other defendants—

Mr. HONEYMAN: May I interrupt to say that I want to object to the counsel for the Government interfering with witnesses called for the Colwell Lead Company. It seems to me that these witnesses are of age and are represented by counsel, and are able to take care of their own affairs. It is not proper for counsel for the Government to interfere in the examination. His actions interfere with my getting testimony to support my defense.

Mr. NOBLE: I desire to note my objection to counsel for the Government stating to the witnesses called here, and whom I expect to examine in their own defense, such things as he has heretofore stated, on the ground that he is intimidating the witnesses and making them feel that it is impossible for them to tell the entire facts in this case so that their defense may be complete for fear their testimony may tend to incriminate them.

Mr. GROSVENOR: I was interrupted before I had finished. You understand that you are not called by the Government, and the Government makes no promise of immunity to you for your testimony in this case.

THE WITNESS: I understand that.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Wright, what is your business?

A. Manufacturer of sanitary enameled ware.

Q. That is, enameled iron ware? A. Enameled iron.

Q. What is the name of your company?

A. The present name is the Wheeling Sanitary Manufacturing Company.

Q. Did that company succeed to the business formerly conducted by the Wheeling Enameled Iron Company?

A. No, it is twice removed from the Wheeling Enameled Iron Company. It succeeded to the business of the American Sanitary Manufacturing Company, which in turn succeeded to the Wheeling Sanitary Manufacturing Company.

Q. What is your position with that company?

A. President and General Manager.

Q. How long have you been connected with the business?

A. I have been connected with it a little better than three years.

Q. What was your business before that?

A. I was in the iron and steel business prior to that time. 1

Q. You are familiar with the general matters affecting the enameled iron ware business at the present time?

A. Well, to an extent, yes.

Q. Do you know the Colwell Lead Company?

A. Yes, sir; know of them.

Q. How long have you known of them?

A. I would say two years, about.

Q. Do you know of them as manufacturers of enameled iron ware? A. Yes, sir.

Q. What do you know in a general way about their business? 2

A. I know that they are jobbers and manufacturers, jobbers in plumbers' supplies.

Q. Have they bought enameled iron ware from you?

A. No, sir; they have bought other goods from us.

Q. Do you know whether or not they do buy enameled iron ware?

A. No, sir; I couldn't say of my personal knowledge.

Q. Do you know whether the Colwell Lead Company sell to plumbers or to the jobbing trade?

A. It is my understanding that they confine their sales to plumbers. 3

Q. Do you know whether they sell generally throughout the United States, or is it only local?

A. I think it is only local, since we never come in competition with them.

Q. Did you ever hear of their having agencies for selling enameled iron ware throughout the United States?

A. No, sir.

Q. Have you run up against them in competition in New York City? A. No, sir.

Q. You do not sell to plumbers in New York City yourself? 4

A. We confine ourselves to the jobbing trade exclusively.

Q. Are you familiar with the Arrott patent?

A. Yes, sir.

Q. Did you ever discuss or talk with anyone concerning uniform licenses under the Arrott patent with Wayman?

A. Uniform—

Mr. HONEYMAN: Just read him the question.

Stenographer then read the last question.

1 A. Not that I recall.

Q. Did you ever discuss with Dr. Duryea, Mr. B. O. Tilden, or any representative of the Colwell Lead Company, the subject of any uniform licenses under the Arrott patent or any other patents used for the manufacture of sanitary enameled iron ware? A. No.

Q. Did you ever have any conversations or communications of any kind, character, or description with any representative of the Colwell Lead Company or any officer of the Colwell Lead Company concerning the maintenance of prices on enameled iron ware?

2 THE WITNESS: Concerning what?

Mr. HONEYMAN: The maintenance of prices?

A. No, sir.

Q. Or concerning any resale agreements or anything of that sort? A. No, sir.

Q. Did you ever have any communications with any representative of the Colwell Lead Company, or any member of the Colwell Lead Company which in any way could be understood to be in restraint of trade? A. No, sir.

EXAMINATION BY Mr. NOBLE OF COUNSEL FOR THE WITNESS.

3 BY Mr. NOBLE:

Q. Are you here under a subpœna? A. Yes, sir.

Q. At whose request was that subpœna served, or on whose behalf? A. The Colwell Lead Co., I presume.

Q. Mr. Wright, I want to ask you generally about Mr. Franzheim's connection with the Wheeling Enameled Iron Company and its two successor companies. What was his relationship to the Wheeling Enameled Iron Company?

A. He was secretary.

Q. Was he a member of the Board of Directors?

4 A. No, sir.

Q. Did he have anything to do with the direction of the company's business, or was his position ministerial or that of a clerk or employee?

A. He carried out the instructions laid down by me. In reality he was not anything more than a clerk.

Q. There were some letters sent out to the trade relative to the license agreement or the papers here referred to as the "License Agreement" and "Jobber's License Agreement"

similar to Petitioner's Exhibits 9 and 11. Were those sent out by his own volition or under direction? 1

A. Under direction.

Q. And who gave him the directions? A. I did.

Q. Now, what was his relationship to the company which succeeded the Wheeling Enameled Iron Company?

A. The same, the secretary.

Q. Was he a member of the Board of Directors of that company? A. No, sir.

Q. And anything he may have done with the so-called license or jobber's agreement there, will you state the circumstances under which those things were done? 2

A. The conditions were the same as obtained with the Wheeling Enameled Iron Company.

Q. Now, the present company, known as the—

A. The Wheeling Sanitary Manufacturing Company.

Q. Has he ever been connected with that?

A. Not in an official capacity.

Q. Was the matter of the license agreement or the jobber's license agreement here referred to ever brought to the attention of the Board of Directors of the Wheeling Enameled Iron Company or any of these companies? A. No, sir.

Q. Did you consult with Mr. Franzheim at the time you were discussing this question of a license from Mr. Wayman? 3

A. After we accepted the license I made known to him the conditions under which the agreement was signed. Beyond that he had nothing to do with the thing at all.

Q. And he had nothing to do with your accepting the license? A. Absolutely no.

Q. Mr. Wright, did you and your company make an Answer in the civil suit filed in the United States Circuit Court at Baltimore?

A. We made an answer, but as to the filing, I presume you did the filing.

4

Q. When the answer was made you directed counsel to attend to it for you? A. Yes, sir.

Q. Did you verify that answer? A. Yes, sir.

Q. Swear to it? A. Yes, sir.

Q. Will you please state the date upon which you swore to it? A. The 1st day of October, 1910.

Q. Was what you swore to in that answer true at the time? A. It was.

Q. And is it true now? A. Yes, sir.

1 Q. Were you, or was your company, a member of the Sanitary Enameled Ware Association of which Mr. Wayman was at one time commissioner? A. Yes, sir.

Q. Did that association or any of its members have anything to do or did it bring about the licenses which Mr. Wayman granted to you and to other manufacturers under the Arrott and other patents?

A. Speaking for our own company, no.

Q. Speaking for yourself, as well as your own company, that is true? A. Yes, sir; we had nothing to do with it.

Q. When did you first hear of the licenses which were
2 subsequently granted, or of the plan of Mr. Wayman to grant the licenses? A. I think the latter part of February, 1910.

Q. From whom did you first hear of the matter?

A. Mr. Wayman?

Q. Had you ever heard the subject discussed by any manufacturer of sanitary enameled iron ware prior to the talk that you mentioned as having with Mr. Wayman in the latter part of February? A. No, sir.

Q. As far as you and your company are concerned, this plan was entirely whose? A. Mr. Wayman's.

Q. You said you have been connected with the enameled
3 iron ware business and the Wheeling Enameled Iron Company and its successors for about three years?

A. A little longer than three years.

Q. Have you or your Company ever had any understanding with any other manufacturers of sanitary enameled iron ware to maintain prices? A. No, sir.

Q. Have you ever had any understanding or agreement to restrict the output of your factory or their factories?

A. No, sir.

Q. Now, the Government alleges in its petition that all these defendants, which would include you and your com-
4 pany, agreed with the other defendants to bring about an assignment of the Arrott, the Dithridge and the Lindsay patents from the Standard, the Mott and the Wolff Companies to Mr. Wayman. Is that statement true so far as you and your company are concerned?

A. Insofar as we are concerned, that is the Wheeling Enameled Iron Company and myself, it is not.

Q. Did you ever hear anybody suggest such an idea?

A. I did not.

Q. Did any other manufacturer ever discuss such a plan with you? A. No, sir. 1

Q. When Mr. Wayman first spoke to you about this matter, did he tell you anything about these patents?

A. He told me he had secured an option on those particular patents, and he outlined briefly what he purposed doing.

Q. Thereafter your Company received a license from Mr. Wayman, did it? A. Yes, sir.

Q. On substantially the lines, was it, which he outlined to you at that interview? A. Yes, sir.

Q. Did you ever have any agreement with other manufacturers at any time as to the manner in which you would sell your product? A. No, sir. 2

Q. You sold your product to such jobbers as you saw fit to trade with? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And that is true for all times since you have been in the business? A. Yes, sir.

Q. Now, the Government alleges that before the assignments of the patents which I have mentioned, namely, the Arrott, the Ditheridge and the Lindsay patents, were made to Mr. Wayman, that the defendants had agreed—that is these manufacturers, including you and the other manufacturers, defendants in this equity suit—had agreed upon all the essential features of what they call the licensing agreement. Is that true so far as you and your company are concerned? A. No. 3

Q. Is there any truth in it at all so far as you and your company are concerned? A. No, sir.

Q. Did you ever hear any other manufacturer discuss the matter or say anything that would indicate that there was any truth in that statement? A. No, sir.

Q. They allege also that likewise the defendants had agreed upon the principal terms and conditions of the contracts to be entered into by the manufacturers with Wayman, who was an "ostensible licensor." Now, I ask you, so far as you and your company are concerned, did you have any understanding or agreement whereby Mr. Wayman was to be an "ostensible licensor," or a person not in fact dealing with you as he purported to deal, that is, not the real owner of these patents? 4

A. He was the owner, so far as we knew, of these patents. He told me he owned the patents.

1 Q. Had you agreed with the other manufacturers upon the principal terms and conditions of the license agreement?

A. We had no agreement with any other manufacturer.

Q. Did you ever hear any other manufacturer say that he had or suggest that he had? A. No, sir.

Q. They further say that you and the other manufacturers had agreed upon the price list, that is upon the price at which sanitary enameled iron ware, goods should be sold, the terms and conditions under which it should be sold, and so on. Did you have anything to do with that?

A. We had nothing to do with establishing the prices.

2 Q. And you had no such agreement with any other manufacturer? A. No, sir.

Q. And so far as you and your company are concerned, is there any truth in that statement? A. No, sir.

Q. Now, they say that you and the other manufacturers had, by agreement and consultation between yourselves fixed the prices so that every user would have to pay a uniform price. Is that true so far as you are concerned?

A. No, sir; we had nothing to do with the establishing of the prices.

Q. So far as you were concerned, those prices were fixed

3 by whom? A. Mr. Wayman.

Q. Now, they say that you and these other defendants were engaged in a price fixing plan designed to eliminate all rivalry between you. Were you a party to any such plan as that? A. We had nothing to do with any such thing.

Q. So far as you know did any such plan exist? A. No.

Q. Did your company install and use the Arrott patent after Mr. Wayman granted your company a license?

A. Yes, sir.

Q. I asked you, did I not, if you had any agreement with any other manufacturers in regard to the assignment of these

4 patents to Wayman? A. I don't recall the question.

Q. Well, did you have any agreement or understanding with any other manufacturer, the purpose of which was to cause the assignment of these patents to Wayman?

A. No, sir.

Q. Have you been in the State of Michigan in the last three or four years? A. No, sir.

Q. Mr. Wright, in view of what counsel for the Government, Mr. Grosvenor, said to you when you took the witness stand, would you be willing to answer questions fully and

freely concerning matters which are alleged in the indictments in Detroit and in this petition here as being unlawful and constituting a crime under the statute? A. I would. 1

Q. Of course, it is my duty to tell you before I commence to ask you any of those questions, that some of those things might incriminate you or tend to incriminate you. Now as to those questions, I want to know if you would be willing to go into them or not?

Mr. GROSVENOR: Counsel for the Government suggests that this is a very remarkable way of presenting to the witness his constitutional privilege, and objects to this line of questioning. 2

Mr. NOBLE: I don't want to do anything that might tend to incriminate you.

THE WITNESS: I don't want to do anything tending to incriminate myself.

Mr. NOBLE: Well, you have a right to refuse to answer under your privilege, under the law, which Mr. Grosvenor stated to you.

THE WITNESS: Well, I would decline to answer that last question.

Mr. NOBLE: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR: 3

Q. Mr. Wright, where were you subpœnaed to attend this hearing? A. In this building.

Q. In this building? A. Yes, sir.

Q. Where? A. Right out in the lobby there (indicating).

Q. Out in the corridor? A. Yes, sir.

Q. How did you happen to be in the corridor?

A. I came here in response to a telegram which I received.

Q. You came to Pittsburgh in response to a telegram?

A. Yes, sir.

Q. From your counsel? A. Yes, sir. 4

Q. Noble, Jackson & Hubbard? A. Yes, sir.

Q. When did you receive that telegram?

A. Friday evening, by telephone.

Q. Have you that telegram with you? A. No, sir.

Q. That said to come to Pittsburgh? A. Yes, sir.

Q. Well, how did you happen to come to the Federal Building?

A. That was in accordance with instructions, I think, with the message.

Q. Did you know that you were going to be put on the stand as a witness?

A. I did not know positively that that would be the case.

Q. But you thought it might be the case? A. Yes, sir.

Q. And you came for that reason? A. Yes.

Q. Upon the receipt of the telegram? A. Yes, sir.

Q. You testified, Mr. Wright, that you had no agreement with other manufacturers respecting prices. That was stated in your examination by Mr. Noble. Is that right?

A. That is a fact.

Q. As a matter of fact, you knew, did you not, at the time you were discussing with Wayman the entering into of a license agreement with him, that the other manufacturers in your line of business were also negotiating with him for the purpose of entering into agreements also?

A. I understood that, but not all of them?

A. The larger part of them?

A. Well, I don't know how many.

Q. And you understood that the same agreements which you were signing were being signed by the others?

Mr. NOBLE: I object to that question. There is no testimony as to the witness signing these agreements. I call the witness' attention to the fact that there is no proof in this case that he signed any agreement. Therefore, it is not proper cross examination. Secondly, I instruct the witness not to answer that question, involving as it does more than is apparent on the face of the question, on the ground that it might tend to incriminate him, and I advise him that he may take advantage of his privilege.

Mr. GROSVENOR: Now, read the question, please.

Stenographer then read the last question.

Mr. GROSVENOR: Will you answer that question?

THE WITNESS: I decline to answer on the ground that it might tend to incriminate me.

Q. Who were the directors of the Wheeling Enameled Iron Company in May, 1910?

A. J. J. Holloway; W. A. Wheat; W. J. Mays; William F. Stifel.

Q. Were you a director? A Yes, sir.

Q. Were these other directors employees of the company?

A. No.

Q. Were they connected with the selling end or the manufacturing end of the company, or just stockholders? 1

A. Just stockholders.

Q. And you were the active head of the company?

A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. When you received this telegram telephoned to you as you have described, and when you came here, did you know that you were going to be called as a witness for the Colwell Lead Company? A. No, sir.

Q. You did not know that until you were subpœnaed? 2

A. No.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. When you came from Wheeling to Pittsburgh, however, you expected to be a witness, is that right?

A. Yes, sir.

RE-REDIRECT EXAMINATION BY MR. NOBLE:

Q. I had a talk with you, Mr. Wright, hadn't I some two or three weeks ago, and said that I probably would call you?

A. You did. 3

Examination Concluded; Signature Waived.

HERMAN M. HOELSCHER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Mr. Hoelscher, what is your business?

MR. GROSVENOR: Mr. Hoelscher, before you answer any questions— 4

MR. HONEYMAN: I want to interrupt long enough to say that I do not think it is any part of the business of the Government, or of its representatives, to attempt to browbeat or intimidate my witnesses. The witnesses are all of age and have counsel and do not need advice from the counsel for the Government, and are not seeking it. They want to be let alone by the Government, as I understand it. I do not think it is

proper or decent for the Government to interfere with my proving my defense.

Mr. GROSVENOR: Have you anything to say, Mr. Noble?

Mr. NOBLE: In order to satisfy the counsel for the Government, I do object, and I object very strenuously to the remarks which I assume he is going to make to the witness, because they intimidate the witnesses, and prevent them, as defendants, from freely presenting their defenses and from fully testifying. The Government puts these witnesses and this defendant in an inequitable and unfair position by forcing—as it is doing—and hurrying with all the power that it can hurry, this case to a conclusion, at a time when it is impossible for these defendants to present their defense.

Mr. GROSVENOR: Mr. Hoelscher, I am not giving you any advice of any sort. I just want to tell you that anything you may say here that is material may be material in your Detroit suit, and for that reason you may refuse to answer any questions which may incriminate you in the Detroit suit, and what I particularly want to say is that the Government is not going to give you any immunity for any testimony that you give here, because you are not called as a witness for the Government. I want you to understand that in advance. You may rely on your constitutional privilege not to answer, but if you do answer you waive that privilege, subject yourself to cross examination and do not gain immunity.

Mr. HEATH: We object to the representative of the Government stating that the Government will not give immunity. The immunity flows from the statute. I want to call the stenographer's attention to the fact that he did not get my statement correct as to the other witness. I said "statute" and not "Government."

Mr. HONEYMAN: I think you said "statute" and Mr. Noble corrected you, and you then said "Government." I thought that I brought this witness here, but I see that all of you are interfering with my conducting this proceeding in my own way. That applies to all parties interfering with my examination. I want to

advise the witness that he is here under my subpœna, 1
at my instance, and I shall expect him to answer such questions as I put to him on behalf of the Colwell Lead Company, and if he does not answer my questions, I shall take steps to compel him to answer if necessary.

Q. Now what is your business?
A. Plumbing supplies.
Q. With what company?
A. The L. Wolff Manufacturing Company.
Q. Do you manufacture enameled iron ware?
A. Yes, sir. 2
Q. And other plumbing supplies? A. Yes, sir.
Q. How long have you been in that business?
A. Over twenty years.
Q. You are generally familiar with the trade and with the people who are engaged in that business?
A. Thoroughly so.
Q. Do you know the Colwell Lead Company?
A. Yes, sir.
Q. What do you know about their business?
A. I know they are engaged in business in New York City. 3
Q. Do you know what their business is in a general way?
A. I believe they are jobbers of plumbing supplies in New York City.
Q. That is all classes of plumbing supplies?
A. That is my impression.
Q. Do you know whether or not they sell enameled iron ware? A. I believe they do.
Q. Do you know whether or not they manufacture part of the enameled iron ware that they sell?
A. I think they do.
Q. Do you know whether or not they buy any portion of 4
the enameled iron ware that they sell? A. Yes, sir.
Q. That is your understanding? A. Yes, sir.
Q. You meet your competitors from time to time?
A. Yes, sir.
Q. And you make it your business to be posted about trade matters? A. Yes, sir.
Q. Do you know whether or not the Colwell Lead Company sell to jobbers? A. I do not; I don't think they do.

Q. If they did, would you know of it?

A. I think I would.

Q. Do you understand that they sell to plumbers?

A. I think they do.

Q. Is it your understanding that they sell to plumbers only?

A. Yes, sir, I understand they are jobbers and sell to plumbers or to the retail trade.

Q. Do you know where their business is done?

A. I believe in New York entirely.

Q. Do you know whether or not it is true that the Colwell Lead Company has agents throughout the United States and is engaged generally in selling enameled iron ware throughout the United States? A. I never heard that.

Q. If it was true, would you know of it? A. Yes, sir.

Q. Can you say, then, whether it is true or not?

A. I would say it is not true.

Q. Did you ever discuss with Dr. Duryea or Mr. Tilden or any representative or officer or agent of the Colwell Lead Company any scheme for the maintenance of prices?

A. No, sir.

Q. Did you ever discuss with the Colwell Lead Company, any officer or representative of the Colwell Lead Company any method or plan or thing, of any kind or description, which could by any possibility be construed as an agreement in restraint of trade? A. No, sir.

Q. Did you ever discuss with anyone connected with the Colwell Lead Company, directly or indirectly, any scheme for issuing uniform licenses under any patents?

A. No.

Q. You are familiar with what is known as the Arrott patent? A. Yes.

Q. Did you ever discuss with anybody any scheme for uniform licenses under the Arrott patent? A. No.

Mr. HONEYMAN: That is all.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE:

Q. Mr. Hoelscher, were you subpœnaed to come here to testify this morning? A. Yes, sir.

Q. Did you receive a telegram from my firm last week

requesting you to come here for conferences and give testi- 1
mony?

A. A telegram was received at our office on Friday. I was at Mr. Wolff's home, as he was very ill, and he died that evening, and that message was telephoned to me. As I remember it, it said to come to Pittsburgh for conferences and remain a day or so to complete conferences.

Q. And didn't it say I had to complete the taking of testimony by the 28th—

A. Twenty-eighth or the twenty-second, I forget which.

Q. The 22nd; that is right. And, it was pursuant to that telegram that you came? A. Yes, sir. 2

Q. Had you any knowledge that you would be called by the Colwell Lead Company to give any testimony here?

A. None whatever.

Q. Has Mr. Ludwig Wolff, who was the President of the L. Wolff Company, and who was one of the defendants in this suit and who was indicted in Detroit, died recently?

A. He died Friday evening.

Mr. NOBLE: Mr. Grosvenor, I wanted to ask you this morning if you desired to have Mr. Fisher recalled for further cross examination?

Mr. GROSVENOR: No, I think not. 3

Mr. NOBLE: Then, we can note in the record that the Government waives any further cross examination of Mr. Charles A. Fisher, I think his name is.

Mr. GROSVENOR: Yes, the stenographer took the note.

BY MR. NOBLE:

Q. Mr. Hoelscher, are you one of the defendants in the suit of the United States of America against the Standard Sanitary Manufacturing Company and others filed in the Circuit Court for the District of Maryland? A. Yes. 4

Q. And were you subpœnaed in that suit to make answer?

A. Yes, sir.

Q. Did you make answer in that suit? A. I did.

Q. And did you direct that your answer be filed?

A. I did.

Q. Did you verify or swear to the answer which you made? A. I did.

Q. I show you a copy of the answer and ask you on what day you verified that answer?

1 A. The 30th day of September, 1910.

Q. And that answer you directed to be filed as your defense in that suit? A. Yes, sir.

Q. Was what you said and swore to in that answer true?

A. It was.

Q. And is it true today? A. Yes, it is.

Q. Was your company a member of what has been referred to here as the Sanitary Enameled Ware Association, of which Mr. Wayman was at one time Commissioner?

A. We were.

Q. Were you present at the meeting at which Mr. Way-
2 man was elected? A. I was present.

Q. Was there more than one candidate for that office?

A. Yes, there was.

Q. Do you recall the vote?

A. I believe, as near as I can remember that there were thirteen or fourteen or fifteen votes. I believe Mr. Wayman was elected by two majority, as near as I can remember that. I think it was about eight to six, or six to seven. I know there was a difference of about two votes.

Q. Who was the other applicant for the position?

A. There were two applicants to start with, other than
3 Mr. Wayman.

Q. Were there? A. Yes, shall I mention them.

Mr. NOBLE: Yes.

A. (Continuing): There was a Mr. Ainsworth, of Chicago, whom I thought was going to be elected secretary of the association, and then the other candidate was Mr. Charles E. Gates. Shall I tell the details of this?

Mr. NOBLE: No, just the candidates.

A. They were Mr. Ainsworth, Mr. Gates and Mr. Way-
4 man.

Q. And Mr. Wayman was elected? A. Yes, sir.

Q. By a divided vote, such as you have described?

A. By a divided vote, of course.

Q. This Sanitary Enameled Ware Association had been in existence under one name or another for a number of years, had it not? A. Yes, sir.

Q. Was there any agreement among the manufacturers, members of the Sanitary Enameled Ware Association, which

I mentioned, or any of them, whereby it was agreed that prices should be maintained? 1

A. There was no agreement as to prices whatever.

Q. Was there any agreement as to the restriction of output? A. No, sir; none whatever.

Q. Or as to restraint of trade in any way?

A. No, sir; none.

Q. Or to stifle competition?

A. No, sir; none, absolutely.

Q. Did the association have anything to do, or any of its members, with bringing about the licenses which Mr. Wayman proposed thereafter to issue to your company and to other companies? A. It did not. 2

Q. The licenses to which I refer are similar to Petitioner's Exhibits Nos. 9 and 11, known as the "License Agreement" and the "Jobber's License Agreement?"

A. I understand.

Q. From whom did you or the Wolff Company first hear of the question of taking a license under the Arrott and other patents? A. From Mr. Wayman.

Q. Did any other manufacturer or any other person connected with the enameled iron ware business propose the plan to you or to the Wolff Company?

A. No, sir; they did not. 3

Q. The proposition, so far as the Wolff Company is concerned, and so far as you are concerned, came from whom?

A. Entirely from Mr. Wayman.

Q. Now, the Government alleges that you and the other defendants in this case agreed upon a scheme or plan or understanding whereby the Arrott patent was to be assigned by the Standard Sanitary Manufacturing Company, the Ditheridge patent was to be assigned by the J. L. Mott Company and the Lindsay patent to be assigned by the L. Wolff Manufacturing Company for a nominal consideration and for a short period, subject to a reassignment on demand as a part of a plan or scheme to have Mr. Wayman license you under such patents. Were you or the Wolff Company parties to such a scheme? 4

A. There was no such scheme or agreement.

Q. Was there any scheme or arrangement of any description between you or the Wolff Company and Mr. Wayman except those expressed in the written instruments?

A. None at all.

1 Q. Do you recall when Mr. Wayman began to negotiate with your company for the purchase of the Lindsay patent, approximately? A. Early in 1910 some time.

Q. Now, the Government alleges that all these defendants agreed upon a plan whereby they would not sell to jobbers or would not sell their goods except upon uniform terms, uniform prices, or agreed upon terms and agreed upon prices. I want to know if there was any such agreement as that between yourself or the Wolff Company and any other manufacturer? A. No such agreement.

Q. At any time? A. No, sir, at no time whatever.

2 Q. Now, the defendants are charged in the Petition with having agreed among themselves upon all the essential features of what is denominated the "licensing arrangement" before the assignments were made. I ask you whether, as to the Wolff Company and yourself, that statement is true?

A. That statement is not true.

Q. Is there any truth in it as to your company and yourself? A. No, sir.

Q. You are one of the defendants in this action?

A. Yes, sir.

Q. And you are indicted in Detroit? A. Yes, sir.

3 Q. And the transactions, matters and things in both cases are the same, are they not? A. Exactly.

Q. So far as you know, did any other manufacturer of sanitary enameled iron ware have any such agreement as is there referred to? A. No, sir.

Q. Now, the Government says that the defendants—which includes you and the Wolff Company, and others—had determined upon the principal terms and conditions of the contracts to be entered into by the manufacturers with Mr. Wayman the "ostensible licensor" before these assignments. I want to ask you whether there is any fact that
4 you know of or have heard of from which it could possibly be inferred that Mr. Wayman was an "ostensible licensor?"

A. None whatever, sir.

Q. As far as the Wolff Company and yourself were concerned, the Lindsay patent was sold to him absolutely, was it or was it not? A. Absolutely.

Q. And he later granted to the Wolff Company a license under the Arrott as well as under the Ditheridge and Lindsay patents, did he not? A. Yes, sir; he did.

Q. Did you or your company have any agreement with

any of the manufacturers or any of the defendants relative to the assignment of these patents to Wayman? 1

A. We did not.

Q. Had you agreed with other manufacturers upon the terms and conditions, whether they are principal or minor of the contracts to be entered into, or which were entered into, between Wayman and the various manufacturers?

A. No.

Q. Now the Government alleges that the price list, or that a price list, was agreed upon among the defendants, containing the terms and prices and conditions under which sanitary enameled iron ware should be sold by the defendants throughout the United States, and fixing the resale prices, etc. I want to ask you whether you or the Wolff Company agreed with other defendants, or any of them, upon a price list or the price list which Mr. Wayman thereafter issued? A. We did not. 2

Q. As far as you are concerned, that price list was issued by whom? A. Mr. Wayman.

Q. Did you or the L. Wolff Manufacturing Company ever have any agreement or understanding or conversation whereby—or pursuant to which—Mr. Wayman was to undertake or to be employed to undertake to get control of the Arrott, the Lindsay and the Ditheridge or other patents and then give licenses to you or to other manufacturers? 3

A. We had no such agreement or understanding at all.

Q. Did you ever hear of any such agreement or understanding, or any facts which would suggest the existence of any such agreement or understanding? A. I did not.

Q. Now, Mr. Hoelscher, it is alleged in the indictments at Detroit, and evidence has been given in this suit, relative to some meetings of manufacturers which took place in Mt. Clemens, in the spring of 1910, as I remember, in the month of April. Were you present at any of those meetings? 4

THE WITNESS: I decline to answer that, as it might tend to incriminate me.

Q. I ask you now whether in view of what counsel for the Government said to you when you took the stand you would be willing at this time to testify fully and freely as to all the matters, transactions and things within your knowledge concerning the subject-matter of this suit and which are involved in the charges laid in the indictment in Detroit?

A. I think I could determine that better when the questions are asked me.

Q. What was done, if you know, at the alleged meetings which took place at Mt. Clemens?

A. I decline to answer that question, as it might tend to incriminate me.

Q. Do you know who was there at those alleged meetings?

A. I decline to answer that question for the same reason.

Mr. NOBLE: That is all.

Mr. GROSVENOR: I have no cross exmination.

Mr. HONEYMAN: The Colwell Lead Company desires to make the same statement—that is, counsel desires to make the same statement to the same effect that he made yesterday, that is that the Colwell Lead Company does not assume any responsibility for the defendants taking witnesses called by the counsel for the Colwell Lead Company and making them their own witnesses for the purpose of their cases. Counsel does not object to their doing so, but states that he has nothing to do with that proceeding and if it is done to facilitate the defense of the other defendants, we do not object, but we are not a party to that proceeding.

Examination concluded; and signing of deposition waived by agreement of counsel for the respective parties.

At this point a recess was taken at 11:50 A. M. until 2 o'clock P. M.

After Recess.

Mr. HONEYMAN: I understand that Mr. Ward, who was under subpœna, does not want to be sworn and testify, and I have no desire to do anything further at this time in such contingencies. I have not been able to get any of the other witnesses under subpœna, so for that reason I will not proceed further now as far as the Colwell Lead Company is concerned. Mr. Noble gave notice that he would present evidence at this time, but I have nothing to do with that.

Mr. GROSVENOR: Is this Mr. Ward the Mr. A. G. Ward who is one of the defendants?

Mr. HONEYMAN: Yes, I believe he is. But, I have not stopped to consider whether they were defendants or not, I have called them as my witnesses anyhow. I suppose if any of my witnesses should happen to come in later Mr. Grosvenor will not object to putting them on. 1

Mr. GROSVENOR: No, the Government is ready to proceed at any time during this week at any hour.

Mr. NOBLE: Counsel for the defendants announces that he has endeavored to get a number of witnesses here for today, and from telegrams and other messages which he received yesterday and before yesterday, he supposed that he would have some witnesses to go on with at this time. I have a number of telegrams, however, which show that four witnesses whom I have asked to come are now on the trains expecting to get here some time this afternoon, and a number of other witnesses expecting to arrive in the morning. I expect to take their testimony tomorrow. Likewise, when we get through here with the witnesses which I have called to come here, I intend to further examine other witnesses, and I may request the Examiner and counsel for the Government, unless unforeseen circumstances change my plans—I have in mind Judge Holland giving his decision—to go on and complete the examination of other witnesses later in New York, perhaps commencing Thursday there. If the witnesses whom I anticipate being here tomorrow are all here, I would like to sit late tomorrow afternoon until we get through. 2 3

THE EXAMINER: You have no witnesses available now.

Mr. NOBLE: Not now.

THE EXAMINER: And you do not anticipate any this afternoon? 4

Mr. NOBLE: Some will be here at 6, some at 8 and some at 9 tonight.

Mr. GROSVENOR: I understood you were going to examine Mr. Wayman. He is in the room.

Mr. NOBLE: I expect to put Mr. Wayman on as my last witness, and I do not desire to call him until I have gotten the testimony of the witnesses whom I am expecting.

Mr. GROSVENOR: Counsel for the Government is ready to go on at any time, either today or any other day this week, either here, in Pittsburgh, or any other place that counsel for the defendants may suggest.

THE EXAMINER: We will adjourn, then, until tomorrow. Can't we start earlier tomorrow?

Mr. NOBLE: Ten thirty is as convenient as any time to start.

THE EXAMINER: You do not think you can start earlier than that?

Mr. NOBLE: I have not seen the witnesses who are to come here, and until I have conferred with them, I am not prepared to say the exact minute that I can go ahead. I may be able to start at 6 o'clock in the morning, but I have not seen those witnesses and I must confer with them, and therefore I would like to have an adjournment taken until the usual time, 10:30 o'clock, which is the time at which we have always started before.

THE EXAMINER: Very well, then.

An adjournment was then taken until 10:30 o'clock the following morning.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburgh, Pa., Post Office Building, 2

April 19, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the defendants was resumed at 10:30 o'clock A. M., at the same place, before C. John Beenwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., 3
on behalf of the Standard Sanitary Manufacturing Co., *et al.*
RUSSELL T. MACFALL, Esq.,
on behalf of the Union Sanitary Mfg. Co., L. C. Huesmann, and E. V. Brigham.
J. R. CAREY, Esq.,
on behalf of the National Sanitary Mfg. Co., Frank G. Borden, and D. W. Davis.

Mr. NOBLE: I had previously offered in evidence, and I now re-offer the certified copies of the Letters 4
Patent of the United States No. 633,941, issued Sept. 26, 1899, to James W. Arrott for a dredger for pulverulent material.

Mr. GROSVENOR: You already have that in.

Mr. NOBLE: Yes, you put the ordinary printed copy in, but this is a certified copy.

Letters Patent referred to were then marked and filed as "Defendant's Exhibit No. 10."

Mr. NOBLE: I now offer a certified copy of the opin-

ion of Judge Cross in the suit of the Standard Sanitary Manufacturing Co. *vs.* The J. L. Mott Iron Works, in The United States Circuit Court for the District of New Jersey, in which the Arrott Patent, No. 633941 is sustained.

Paper referred to was then marked and filed as "Defendants' Exhibit No. 11."

Mr. NOBLE: I now offer the decree in the same case, in which Judge Cross wrote the opinion sustaining the Arrott Patent, No. 633941, entered in the Circuit Court of the United States for the District of New Jersey, this being a certified copy of that decree, it being the final decree.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 12."

Mr. NOBLE: I now offer in evidence a certified copy of the opinion of the Circuit Court of Appeals for the Third Circuit, in the same case, in which the opinion was delivered by Judges Dallas, Gray, and Buffington, who constituted the Court.

Paper referred to was then marked and filed as "Defendants' Exhibit No. 13."

Mr. GROSVENOR: Counsel for the Government objects to the opinions above mentioned, Defendants' Exhibits 10, 11, 12 and 13, except so far as they are introduced for the purpose of establishing that the Arrott patent had been in litigation and had been sustained by the Court. He objects to the introduction of the opinions to establish any of the facts stated in the opinions, the proof in this case being contrary to certain statements of fact contained in the opinions.

Mr. NOBLE: These exhibits are put in evidence by counsel for the defendants for all purposes.

I now desire to state on the record that Mr. Reid Carpenter is in court and Mr. S. N. Ford, of the Humphryes Manufacturing Co., both having been brought here by a telegram, a copy of which was put in evidence by the Government and marked "Petitioner's Exhibit No. 285," the copy having been sent to Mr. Weiskittel, to testify and offer their individual defenses as well as the defense of the Humphryes Manufacturing Company to the suit pending in the Circuit Court of the United States for the District of Maryland; but that owing to

the fact that the matters, transactions and things involved in this suit and laid in the indictments found in Detroit on or about the 7th of December, 1910, are the same, they are unwilling to go on the stand and testify fully and freely or at all as to the matters involved in this suit, owing to the pendency of the criminal cases referred to, for fear that the matters of which they might testify, or be called upon to testify, might tend to incriminate them. Accordingly, they desire at a time when they may so testify to have an opportunity of doing so. Their reasons are also because of the pendency, as I said, of this criminal action, and because of the warnings heretofore given to witnesses previously examined, who upon taking the stand have been warned by counsel to the Government in the manner in which the record will show. 1 2

Mr. GROSVENOR: Counsel for the Government objects to the statement of Mr. Noble as in any way being evidence or binding the Government as to what the desire and wishes of the two defendants named may be. It is evident that statements of counsel are not proof. If it be the fact that these defendants declined to take the stand for reasons stated by counsel for the defendants, his statement is not proper evidence of such action on their part, and the Government does not wish to be bound as agreeing to any of the statements made by Mr. Noble as to what may or may not be the purposes of these defendants. If they wish to claim their constitutional privilege, they cannot do so by a statement of counsel prior to their being placed on the stand. 3

Mr. NOBLE: Counsel for the witnesses does not ask the counsel for the Government to agree to any statement of fact made by Mr. Noble.

Mr. GROSVENOR: Well, counsel for the Government objects to the statement as being in any respect a statement of the facts or to be taken as such. 4

WILLIAM E. CLOW, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company, and others, defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. What is your business?

A. Manufacturer of cast iron water pipe, dealers in plumbing goods.

Q. Where are you in business? A. Chicago.

Q. Do you deal in sanitary enameled iron ware?

A. We do.

Q. How long have you been engaged in that business?

A. About thirty-four years.

Q. What is the name of your Company?

A. James B. Clow & Sons.

Q. Is that a corporation? A. Yes, sir.

Q. Mr. Clow, did you or your Company receive a letter signed by Mr. Joseph Darling, Special Agent of the Bureau of Investigation, Department of Justice, making an inquiry as to whether your Company was forced to sign any jobber's license agreement or any license agreement in respect to the sanitary enameled iron ware business of the manufacturers of it? A. Yes, sir.

A. Yes, sir.

Q. Have you that letter with you? A. No, sir.

Q. Did your Company sign a jobber's license agreement?

A. Yes, sir.

Q. For what reason did you sign it?

A. Signed it with more pleasure than any agreement that we ever signed, because we believed that it was not only for the best interest of our concern, but of the manufacturer and of the purchaser from us and the user.

Q. Were you in any way forced to sign it?

A. No, sir; we were not. We were very thankful that there was any possibility of signing it, and make any such condition as was promised.

Q. Do you recall the approximate date of your signing that agreement? A. I am afraid I cannot recall.

Q. Was it about the 1st of June, 1910?

A. I am afraid I will have to ask you to excuse me on that. I don't remember.

Q. Will you tell me after you had signed that agreement whether there was any difficulty as to the ware or any improvement as to the ware which you purchased?

A. I think I can best answer that by saying that there was a very great improvement of the conditions of the sale of the ware. Enameled iron ware, prior to this arrangement, was purchased where we could buy it the cheapest, to a great extent. Every manufacturer was striving to make it as cheaply

as they could, with the result that there were a very great many returned seconds on the market. We sold them. They gave us a great deal of trouble. The cost of the enameled iron ware was not equal to the installation, and I signed the paper with a great deal of pleasure, because I realized that if there was a fixed price on the ware every manufacturer, instead of making ware cheaper, would make it better, and then back of that, the purchases from him would be based on quality, and what I thought was realized, that the ultimate cost to the consumer was less than before, because there were no seconds sold, and the ware we were getting was of the best that they could produce, consequently less claims for damages and no trouble with the plumber after he installed it. 1 2

Q. So, as I understand you, the customer got a better article and had less trouble and expense and annoyance in respect to having installed ware which proved defective?

A. There is no question whatever that under this agreement the customer received more for his money than he ever did before during the life of the enameled iron ware industry.

Q. With what companies, if you know, did your house sign jobber's license agreements?

A. I don't know. We signed but one agreement. We buy ware from very few concerns. 3

Q. You don't remember that detail?

A. No, our custom is to buy enameled ware from as few concerns as possible, because in the past there was so much trouble with it that we wanted to know whom the ware belonged to, so that we could put in the claim.

Q. Since the 1st of January, 1911, has there been any difference in the conditions of the trade as compared with the period from June 1st to January 1st, 1911?

A. Yes, sir; there is no pleasure in selling sanitary enameled ware, and no profit. In selling that ware to the plumber or customer we do not know if the guarantee is good for anything. We don't know what a guarantee means today. 4

Q. During the period from June, 1910, until December 31, 1910, did you know what a guarantee meant?

A. We knew what a guarantee meant and so did the plumber and so did the consumer, and when we got an article we knew the manufacturer was making the best that he could, because on the question of quality rested his trade.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Clow, who was this one company that you signed with?

Mr. NOBLE: I object to the question. The witness said that he did not remember that they signed more than one contract. He said they purchased from as few as possible.

Mr. GROSVENOR: What was the question?

The stenographer then read the last question.

A. If you will change that and ask me from whom we pur-
2 chased, I may be able to answer that. I only know we signed the agreement, and we were very glad of it.

Q. What company was the other contractor?

A. Well, I know one of them would be the Standard Sanitary Manufacturing Company.

Q. You signed with the Standard Sanitary Manufacturing Company?

A. That I don't know. If I had the document here I could tell you.

Q. With whom do you think you signed, then?

A. The Standard Company is one, surely.

3 Q. They are the largest sellers to you of enameled ware?

A. Yes, sir.

Q. You confined most of your purchases to the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. You have done so for a number of years?

A. No, there are years that we have gotten more from others than from the Standard.

Q. Your company has made a specialty in the last few years of the Nemo tub, which you bought from the Standard?

A. No.

Q. Haven't you bought that in lots of thousands from the
4 Standard?

A. Well, we bought others in thousands; that is not so much.

Mr. GROSVENOR: Answer the question, please.

THE WITNESS: I answered it.

Mr. GROSVENOR: Read the question, please.

Stenographer then read the last question.

THE WITNESS: When?

Mr. GROSVENOR: In the year 1909 and the early part of 1910?

A. We were buying a good many tubs in the early part of 1909? 1

Q. Nemos? A. Yes, sir, the non-guaranteed tub.

Q. That is the cheapest tub made, is it not, or one of them? A. Yes, sir, it was improperly named.

Q. What is your position with the company?

THE WITNESS: James B. Clow & Sons?

Mr. GROSVENOR: Yes.

A. President.

Q. What end of the business have you charge of, the whole business or the selling end? 2

A. Well, I have had entire charge of it for many years.

Q. Do you make any enameled iron ware? A. No, sir.

Q. You say that from June, 1910, to January, 1911, the conditions in the jobbing trade were good?

A. The conditions were improving constantly from June to the end of the resale term.

Q. In what respect were they improving? Were prices to the jobber improving?

THE WITNESS: I beg pardon.

Q. The jobber was making more money? 3

A. Yes, sir, because they had no trouble. Enameled iron ware is simply trouble,—doubled trouble. Every time you cheapen it you double up on your trouble.

Q. Did you observe the resale prices laid down by that contract in those six months? A. Yes, I did.

Q. Are those resale prices in force now?

A. No, I am sorry to say.

Q. Under the resale prices you made more than you did before June, 1910? A. Because—

Mr. GROSVENOR (interrupting): Answer yes or no.

A. (Continuing): No, I won't answer yes or no, because neither one will be just to you or to me. 4

Mr. NOBLE: The witness is instructed that he does not have to answer yes or no. He can answer to bring out the truth.

THE WITNESS: That is what I am here for. Yes or no does not tell the story.

Mr. GROSVENOR: That is what I want, the truth.

THE WITNESS: If you let me go on I will tell the truth. That is the only way you can get anything out of me.

Mr. GROSVENOR: Will you read the question?

Stenographer then read the question referred to.

A. Before 1910—

Q. (Interrupting): Before June, 1910?

A. Before June, 1910, the trouble with enameled iron ware made its handling a loss, irrespective of the price at which it was purchased or the price at which it was sold.

Mr. GROSVENOR: Read the question again, please.

The stenographer then read the question referred to.

THE WITNESS: Read my answer again.

The stenographer then read the answer referred to.

THE WITNESS: After the resale plan, the handling only of guaranteed goods made its sale profitable.

Q. Were the resale prices—by that I mean the prices to the plumber—under the resale plan as an average, higher than they were before the resale plan?

A. The selling price may have been higher under the resale plan, but the net cost to the consumer of the article delivered was less.

Q. What items are you referring to now in adding to the price which makes the cost less? A. Trouble.

Q. Trouble? A. Trouble.

Q. Outside of that, taking it from a pecuniary standpoint, I mean, just what is paid by the plumber to the jobber, did the plumber pay the jobber more under the resale prices than he has paid since the resale prices were abolished, just in money, I mean?

A. Money is all we are working for. We are not there for our health, and it is money that we are looking for in the article we sell, and the trouble that was found in the sale of enameled ware prior to this agreement was that the plumber did not pay us what we charged him, because he loaded us down with claims for ware that he claimed was imperfect, and I say to you now, as I tried to convey to you before, that under the resale plan we received more net money from our invoiced charge than we did before, because the element of trouble was eliminated and our bills were paid and the consumer received what he purchased.

Q. In other words, the contract system put in force regulated the sale, is that right? 1

Mr. NOBLE: I object to the phrase "the contract system." The witness is testifying as to what his company did.

THE WITNESS: Will you read the question?

The stenographer then read the last question.

Mr. GROSVENOR: If that is not clear I will try to make it clearer.

THE WITNESS: I wish you would, please.

BY Mr. GROSVENOR: 2

Q. I show you what is Government's Exhibit No. 133, being the price list known as the resale price list. You have seen that sort of a book before, I take it? A. Yes, sir.

Q. And that is the resale price list which the jobber observed in selling to the plumber under this license system, is that right? A. Yes, sir.

Q. This book contains a lot of conditions, for instance under "General Conditions," "Deliveries," etc., and then there are others among these first pages. These are the conditions which governed you in the sale to the plumber, is not that right, under the resale system? 3

A. They are the conditions with which we were very glad to comply.

Q. They are the conditions under which, gladly or unwillingly you sold to the plumbers? A. Yes, sir.

Q. But they are the conditions which you observed in your sales to the plumbers?

A. I again repeat, very gladly observed.

Q. Now, when you say that conditions were improved in your troubles with the plumbers and of the plumbers with you, you mean that the selling under this uniform arrangement brought the business to a stable condition, is that right? 4

A. Yes, sir.

Q. That is to say, Mr. Clow, most of the jobbers signed these contracts and sold under these price-lists following out this book? A. I am speaking for our company only.

Q. Have you any idea what per cent. of jobbers signed this contract with the Standard Sanitary Manufacturing Company?

A. I am not expressing ideas, only my knowledge.

1 Q. Can you state from your knowledge of the business?

A. I only will testify from what I know, and beyond that nothing.

Q. Was it your observation in the business that the majority of your competitors signed this contract with Wayman? A. I think they did, if you want a thought.

Q. You received a notice that in order to obtain sanitary enameled iron ware, it would be necessary for you to sign a contract.

Mr. NOBLE: One moment. There is no evidence in this case that such a notice was ever sent out. The
2 only evidence in this case respecting that was that Mr. Wayman stated certain things to manufacturers whom he had licensed under his patents.

Mr. GROSVENOR: Will you read the last question?

The stenographer then read the last question .

A. I don't remember the receipt of any such notice. The question of the plan was discussed, and its advantages were so apparent that there was never any question as to our signing it.

Q. Going back to this division of time, in which you were
3 comparing the periods from June, 1910, until the end of December, 1910, and the period subsequent to January 1st, 1911, from a jobber's point of view you state that the condition from June, 1910, until the end of the year 1910 was to be preferred to the period beginning January 1st, 1911?

A. To all time previous, I said—to all time ever since the first piece of enameled iron ware was made.

Q. And also preferable to the time since January 1st, 1911? A. Very much.

Q. During that period to which you refer, you sold to all your customers in accordance with the prices established
4 in this price list, is that right? A. I believe so.

Q. The price of any article named in this price list to the plumber was determined by a reference to its appropriate place in this book?

A. Well, that book undoubtedly determined our prices, but we did not sell from the book. We sold from our own discount sheets.

Q. I thought you observed these resale prices?

A. We did, but we sold from our own publication or book, which were undoubtedly based on that book.

Q. You used your own book for reference? A. Yes, sir. 1

Q. But that had been made up the same as this (indicating)? A. Undoubtedly.

Q. So that every plumber, no matter where he was located, if he was in one of these territories, paid the same as every other plumber? A. Yes, sir.

Q. And every jobber who had signed this contract would sell to the plumber in that territory at the same price?

A. Yes, sir.

Q. Because all the jobbers who had signed were using this one book? A. I don't know.

Q. How are prices since the break-up? 2

THE WITNESS: Will you permit me to swear?

Mr. GROSVENOR: Yes, certainly.

A. It's hell.

Q. There is now competition between the jobbers?

A. No, there is the most damnable stuff put on the market that was ever put on in the world. It costs the consumer more than he ever paid for ware, and it is not only hell, but it is condensed hell. There is no guarantee and there is all kinds of stuff put on the market that is called enameled iron ware. Everyone sells as he pleases, and there is no profit 3 or pleasure in selling it. And a very large proportion of the ware that is sold on the market today is a swindle on the consumer.

Q. This is true of conditions since January 1st, 1911?

A. Yes, sir.

Q. Now, do you know anything about this Arrott patent?

A. No, I don't know anything about enameled iron ware patents at all; I don't know anything about the manufacture; I don't want to make the stuff, I have trouble enough of my own.

Q. It is claimed here that this Arrott patent enables the 4 manufacturer to make a better article.

A. I wish to God they would all use it, then.

Q. The statement is that sixteen of these manufacturers have all used this Arrott patent since June 1st, 1910. How do you account for the fact that this poorer article has come to the fore since January, 1911, although the Arrott patent is being used?

A. For the same reason that the Germans determined that uncontrolled competition was destructive to a manu-

1 factured article. Now you have uncontrolled competition and they are making the stuff as cheaply as they can. All they want to do is to sell it, and a large proportion of the stuff now made is worse than worthless, because there is labor added in its installation.

Q. Can you name any of the manufacturers who are putting the poorer article on the market since January 1st, 1911.

Mr. NOBLE: I object to the question.

A. A man was about to die, and the preacher asked him if he would renounce the devil and all his sins, and he said,
2 "I am a sick man. I am going to a strange country, and I don't want to make any enemies."

Q. I don't want to unnecessarily embarrass you by asking you who these manufacturers are by giving the names on the record, but will you look at these two pages, that is pages 5 and 6 of this pamphlet which I show you, which is the Petition of the Government in this case, and state whether you see the names of any of the people who are selling these inferior articles.

THE WITNESS: I will do that if you agree that you will not ask me to specify them after I have looked.
3 Mr. GROSVENOR: Well, you can refuse to answer if I should.

A. I will refuse now. I don't have to look any further. As soon as I opened the first page I saw the name of a concern making enameled iron ware that is a disgrace to the community.

Q. Will you look on the second page?

A. Yes, sir, that is where I got my information from.

Q. And these are all manufacturers under the Arrott patent?

4 THE WITNESS: Are they making it now under the Arrott patent.

Mr. NOBLE: I object to this question as to the Arrott patent.

A. I think they have forgotten the Arrott patent.

Mr. NOBLE: The witness has said that he did not know anything about the Arrott patent.

Mr. GROSVENOR: Were you at any meetings of jobbers and manufacturers of enameled iron ware at

which this arrangement was discussed before it was put in operation in June, 1910. 1

THE WITNESS: Before June, 1910?

Mr. GROSVENOR: Yes.

A. I think this is the first meeting I ever attended, before or since.

Q. I am not referring to a hearing. You said the plan was discussed—

A. (Interrupting): By our officials, not by anyone else; by the officials of our company.

Q. Did you attend any meetings of jobbers at which this plan was discussed in 1910, before it was put in operation? 2

A. Well, we had been trying to get a resale plan for years, and this is the first resale plan we had, and you broke it up.

Mr. GROSVENOR: Will you answer that question; read it.

The stenographer then read the last question.

A. I don't remember attending any meeting called specifically to consider any resale plan on enameled iron ware. I have attended a number of meetings where in the general order of business the resale question came up, and we have done all we could to urge all manufacturers to adopt a resale 3 plan, for under no other plan can we obtain good material of any kind.

Q. By a resale plan you mean the resale to the plumbers?

A. No, I do not. I mean a plan that establishes a price so that a manufacturer will make the best article he can under a fixed cost. In other words, I want to do just exactly the same as the United States Government has done where it has said in certain cases that they were willing to pay a certain price for an article and wanted the best article they could obtain for that price, and they fixed the price. We want the manufacturers to fix a price at which an article is 4 to be sold and then buy from the manufacturer that makes the best article. That is the only way in the world that you can get the material improved.

Q. In other words, you wanted the manufacturers all to have the same price to sell to the jobber? A. Yes, sir.

Q. Then, don't you want the jobbers to have the same price to sell to the plumbers?

1 A. I don't care a rap whether they do or not. I want the manufacturers to have the same price.

Q. To give to the jobber?

A. Yes, sir, so that he will be able to make a good article so that when we sell it we make the money that we bill the thing for and not have claims taken out that far exceed our earnings. We want the manufacturer to fix a price, if you can make it by law, that every manufacturer in the United States must sell by that price, and then we can buy the best article, and that is the way the consumer gets the best goods, whether it is the clothes you wear or enameled iron ware.

2 Q. Wouldn't the same thing apply to the plumber? Didn't you want the jobbers to have all the same price? Is not that the resale price?

A. You asked me what I wanted and I told you what I wanted. All the jobbers naturally want one price, so that they will have no trouble. We have to sell the stuff on such a horribly close margin that the difference between the goods you have a little trouble with and the goods that you have no trouble with exceeds your net earnings.

Q. Then, the advantage of this price list to which I have referred is that it makes the same price to all, is it?

3 A. The real advantage of this plan is that it reduces the cost to the consumer by establishing a fixed price at which the manufacturer sells the article and a fixed price at which the jobber sells it, so that there is no incentive for the jobber to go to some outside man and get him to make some cats and dogs that are principally bitch pups to put upon the public, for which they have to pay. You have broken up the best thing that ever happened in the plumbing supply business for the consumer and you have spread hell all through the plumbing supply trade by giving them condensed essence of compressed trouble.

4 Q. Is the Nemo tub classified in that description?

A. I told you that it was misnamed. It should have been named "hell," and every other second named the same.

Q. Which is that, the Nemo tub? A. Yes.

Q. You say you only signed that agreement with one company? A. No, I did not, I beg your pardon.

Q. How many did you sign it with?

A. I told you I did not know.

Q. Have you any idea?

A. I know we bought from two companies.

Q. During that six months?

A. I don't know all the details of our business, and I don't know from how many we did buy, but I do know that we bought from two, because we bought considerable quantities from them.

Q. Did you sign a contract with each of those two?

A. I told you before I don't know.

Q. You did not know?

A. I don't know. I probably did know because I am President of the Company and I signed all those documents, but when I did sign the first one that settled the question of the rest of them and I just signed them, as many as they gave me.

Q. Which is the other Company beside the Standard Sanitary Manufacturing Company of which you bought so much? A. The Cahill Iron Works.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. I want to bring one question to your attention. I understand the trimmings that go with enameled iron ware was still a matter of competition among the jobbers after June 1st, 1910? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. And so there was still competition among the jobbers in the sale of sanitary enameled iron ware? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 JOSEPH P. HARTNETT, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. What is your full name, residence and occupation?

A. Joseph P. Hartnett, Secretary of the L. M. Rumsey Manufacturing Company of St. Louis; residence, St. Louis.

Q. Mr. Hartnett, did you get a letter from the Department of Justice, signed by Mr. Joseph Darling, Special
2 Agent of the Bureau of Investigation, inquiring among other things whether you had been forced to sign a resale contract?

A. I was absent from the office for a few days, and on my return I understood that such a letter had been received.

Q. Have you got it with you? A. No, sir.

Q. Did you take a jobber's license agreement under the patents under which Mr. Wayman licensed the manufacturers of sanitary enameled iron ware?

A. I think I did; yes, sir.

Q. I ask you whether or not your Company was forced to sign—

3 A. (Interrupting): Not at all.

Q. (Continuing): This jobber's license agreement?

A. Not at all.

Q. For what reasons, did you sign?

A. Signed it for what we considered the best interests of our Company.

Q. In what respect, will you explain?

A. Yes, sir; for several years, especially for about two years previous to that, we had a great deal of complaint from our customers, from the plumbers and also the users of enameled ware, calling our attention to the very defective ware
4 which was being marketed. We sent out piece after piece ten miles away with a team out into the west end of the town, and the plumber would go on the job and we would be telephoned to take the piece away, and then we would have to go out and take it away again. We sell at about ten per cent. margin and it would cost twelve or fifteen per cent. just to bring it back, and we were very willing and glad indeed to sign the resale agreement.

Q. What was the result following the period when you accepted this resale agreement.

A. Well, it was most satisfactory; even beyond our expectations. 1

Q. The articles you obtained, were they honest articles?

A. How honest they were, I cannot say. I am not an expert, but I only inferred from the proportionate number of fewer complaints received.

Q. Is it not true that seconds were not sold to you after this resale agreement went into effect?

A. The seconds were immediately withdrawn from the market.

Q. And the complaints which you got from the plumbers and users as to defective ware were not so many or ceased? 2

A. Not only were seconds withdrawn, but we had far fewer complaints on what we called strictly guaranteed articles. Before that we had quite a number of complaints even in respect to them.

Q. So you were able, as I understand you, to rely on the article in marketing it to the plumber and also getting it to the ultimate user?

A. We had so much trouble with enameled ware that our Company had discussed the idea of discontinuing the sale of enemaled ware entirely.

Q. During the period this resale agreement was in effect, what was your experience in dealing in sanitary enameled iron ware, that is the experience of your Company? 3

THE WITNESS: I don't understand the question.

MR. NOBLE: Strike it out.

MR. GROSVENOR: No, don't strike it out.

THE WITNESS: I might answer it this way, that it was more satisfactory.

Q. Since January 1st, 1911, what were the conditions?

A. Well, I cannot say much in respect to that, because in the middle of January I went to Florida. I take my vacation in the winter time, and since my return I have not been much in the office. I have been attending various meetings. 4

Q. Was there anything in the contract, in the price list, which fixed the price the jobber made to the user?

THE WITNESS: From the plumber to the user?

MR. NOBLE: Yes.

A. No, sir; it was immaterial to us.

Q. He could put it at any price he pleased? A. Yes, sir.

1 Q. What was the effect of the elimination of seconds from the trade?

A. The effect, so far as we were concerned, gave us new vigor, gave us more interest in the business and it is far more satisfactory and I can safely say that seventy-five per cent. of the trouble was eliminated.

Q. So you would say that during the period that this plan was in operation the ultimate consumer got a better article?

A. Unquestionably so.

Q. The price upon trimmings which went with sanitary enameled ware was not affected by this price?

2 A. No, sir; not our price.

Q. So that as to the trimmings that went with this enameled iron ware, there was competition among jobbers, was there not? A. Yes, sir; very keen.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What did you say your business was?

A. I am Secretary of the Rumsey Manufacturing Company.

Q. And you sell all kinds of plumbing supplies, do you?

A. Yes.

3 Q. Are you in charge of the selling end of the business?

A. I am kind of jack-of-all trades around the business; I have general jurisdiction.

Q. During the early part of 1910, before June, there was great competition among the manufacturers of sanitary enameled iron ware, was there not, in the sale of the same?

A. Speaking for all of them, I could not answer.

Q. Whom did you buy from chiefly?

A. From the Standard Sanitary Manufacturing Company.

Q. Have you confined your purchases largely to them in

4 the last few years?

A. Yes, sir; we have bought from others, but I think more largely from the Standard than any one else.

Q. Did you get many seconds from the Standard Sanitary Manufacturing Company in 1910? A. Yes, sir.

Q. What is a second?

A. A second is an enameled article which is not guaranteed.

Q. Not guaranteed at all?

A. Well, it is supposed to be guaranteed up to the time of

its reception, but when it comes down to a fine point, there is really no guarantee on it. 1

Q. From whom else have you bought besides the Standard Sanitary Manufacturing Company?

A. The Cahill Iron Works.

Q. Your Company signed a contract, you said, in June, 1910?

A. I think we did on or about that time. I don't remember the exact date.

Q. Did you sign the contract for your Company?

A. No, I think our Mr. Porter signed it, but I am not certain.

Q. You received a notice from the Standard Sanitary Manufacturing Company saying that it was necessary for you to sign such a contract? 2

A. I don't recall receiving such a notice.

Q. Don't you know that that notice was sent out to all the jobbers in the trade? A. No, sir; how could I?

Q. Did you bring your correspondence here, with the Standard Sanitary Manufacturing Company?

A. No, sir; I was in Philadelphia and I got a telegram—

Q. From whom?

A. I got a telegram and a long-distance telephone message from our Company in St. Louis. 3

Q. Did you say there was keen competition among the manufacturers of sanitary enameled iron ware before June, 1910? A. I couldn't say about it.

Q. How about those you bought from?

A. The Cahill Iron Works and the Standard Sanitary Manufacturing Company and the National Sanitary Manufacturing Company of Salem—yes, sir; they were very hard after business.

Q. Any others? A. I cannot recall.

Q. The fact is that the keenest was between the jobbers in their sales to the plumbers? 4

A. I cannot say that, because I don't know what it was among the manufacturers.

Q. Eliminating the comparison, there was a very keen competition in your section of the country between the jobbers of sanitary enameled iron ware? A. Yes, sir.

Q. Very bitter competition? A. Yes, sir.

Q. And the profits were small?

A. No, sir; the profits were losses.

1 Q. This price list which has been spoken of here, after you signed the contract you sold to the plumbers in accordance with the prices laid down in this price list. A. Yes, sir.

Q. And you observe the prices in here? A. Yes, sir.

Q. Wasn't it a fact that most of your competitors, that is the jobbers, also signed similar contracts?

Mr. Noble: How should this witness know what his competitors did?

Mr. Grosvenor: He probably observed the conditions in the trade. If he does not know, let him say so. Will you read the question?

2 The stenographer then read the last question.

A. That I couldn't say.

Q. Wasn't it your observation that after the resale agreement went into effect that the competition between the jobbers as to prices became less intense because all the jobbers, or most of them, observed the resale prices?

A. I don't know if the jobbers all signed the resale contract. I can only speak of our own Company. We signed.

Q. Was the sale among the jobbers improved after June, 1940? A. Yes, sir.

Q. You made more money? A. Yes, sir.

3 Q. That was largely due to the fact that you used this price list? A. Yes, sir.

Q. You made money instead of losing it on these sales?

A. Yes, sir.

Q. The fact is that you sold at a higher price?

A. That I couldn't say.

Q. Where did you make the profit, then?

A. As I stated before, we signed the resale plan. We sell enameled ware on a gross profit of about eight or ten per cent. We would send it to the job, and I suppose around twenty per cent. of it was rejected—

4 Q. By the plumber?

A. Yes; I should judge it was about twenty per cent. that was rejected. Then we had to send our teams out after it. Oftentimes the plumbers would install it without noticing the defects and the user would then notice it, or the architect, and then we would have to take out that tub and that is an expense of five to ten dollars to the plumber and sometimes we have had as many as four that would have to be returned, and instead of paying our bills he would put a bill in to us

for labor charged, so that I can say the net result, as far as we were concerned, was not profitable. 1

Q. You are not able to say that the prices observed under this book were higher than before?

A. No, sir; I never compared them. In fact, the selling end was directly in charge of Mr. Porter.

Q. Mr. Porter? A. Yes, sir; Mr. Porter.

Q. Are you able to discuss the condition that has existed since January, 1911?

A. No, sir; for the reason I have already stated, that I have been absent from the office.

Q. Were you at any meetings of jobbers or manufacturers of either enameled iron ware or jobbers of plumbing supplies at which this resale agreement was discussed? 2

A. Meetings, no. A meeting, yes.

Q. Where was that meeting? A. Niagara Falls.

Q. When was it? A. March or April.

Q. 1910? A. Yes, sir.

Q. Was that a meeting of jobbers of plumbing supplies?

A. Yes, sir.

Q. Were any manufacturers of enameled iron ware present? A. I think not.

Q. Are you positive? 3

A. As far as I can recall now there were none.

Q. How did that question come up, of resale prices?

A. I think it was first referred to by a gentleman from Chicago, Mr. Kellogg.

Q. What did he say?

A. I don't recall what he said. He spoke of the resale plan, and said that Mr. Wayman, who held the several patents, was there to explain the plan.

Q. And you understood that it was confined to sanitary enameled iron ware?

A. I think that was my impression at the time.

Q. And it was explained at that meeting, was it, that this proposed licensing arrangement contemplated the fixing of a resale price? 4

Mr. NOBLE: I object to that. The Government does not need to testify. Let the witness testify.

Mr. GROSVENOR: Read the question.

The last question was then read by the stenographer.

A. By Mr. Wayman, yes.

Q. By Mr. Wayman to the jobbers present?

A. Yes, sir.

Q. Was a resolution passed by the jobbers approving of such a resale plan? A. That I don't remember.

Q. Was there any other discussion of the subject other than that by Mr. Wayman and Mr. Kellogg?

A. I think a number of the gentlemen there referred to it in a general way. What any of them said specifically, I do not recall. The consensus of opinion was that it would be a good thing for everybody.

Q. Were you present at any other meeting or conference at which this license arrangement was discussed?

A. No, sir; I do not recall any other meeting which I attended or at which I was present.

Q. Have I asked you with what companies your Company signed this license contract?

A. I am not certain of the number, but I am satisfied that it was more than one. With whom, I do not know.

Q. You signed with the Standard Sanitary Manufacturing Company? A. Yes.

Q. Were you in Toledo in June, 1910?

THE WITNESS: Was I in Toledo?

Mr. GROSVENOR: Yes, at that meeting of jobbers there.

THE WITNESS: The meeting of jobbers in Toledo?

Mr. GROSVENOR: Yes, or of the Central Supply Association, were you there?

A. I was not.

Q. Or at any meeting in Toledo in June, 1910?

A. Not that I recall.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ALEX B. PIERCE, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Mr. Pierce, please state your full name, residence and occupation?

A. Alex. B. Pierce; St. Louis; Vice-President of the N. 1
O. Nelson Manufacturing Company.

Q. Does that Company deal in sanitary enameled iron ware and plumbing supplies?

A. Jobbers and dealers in plumbing supplies.

Q. You purchase sanitary enameled iron ware?

A. Yes, sir.

Q. And you sell it to the plumbers? A. Yes, sir.

Q. Did your Company receive a letter from the Department of Justice, from Mr. Darling, asking if your Company was forced into signing the resale agreement? A. Yes, sir.

Q. Well, were you forced into signing that agreement? 2

A. No, sir; we were not.

Q. Why did your Company sign it?

A. Because we wanted to; because we thought it to the best interests of our Company.

Q. Why did you think it to the best interest of your Company to do so?

A. Because we wanted to get good enameled ware.

Q. Had the enameled ware that you had been purchasing been unsatisfactory? A. To a great extent; yes, sir.

Q. After the time that you signed this agreement, did you get better sanitary enameled iron ware? 3

A. We certainly did.

Q. How about the seconds?

A. Seconds were eliminated entirely. That was one of the greatest bones of contention in our business, especially by the irresponsible plumber. He would take a specification for guaranteed ware and then buy seconds, and in a great many instances put them in as guaranteed ware. We could not dictate to him what he should buy, and he often bought seconds and put them in as guaranteed ware, and the jobbing house would get the condemnation of the architect and the owner for the quality of the ware installed. 4

Q. And the ultimate consumer was thereby damaged?

A. Yes, sir; and the jobber who sold the goods would get the blame for selling such goods. Our reply was that we could not dictate to our customer what he should buy.

Q. After the resale agreement went into effect, tell me what the conditions were then, what could the plumber do then?

A. We sold him first class goods because we had no seconds to sell him—we sold him better goods.

Q. So the ultimate consumer got an article on which he could rely and on which you could rely?

A. Got what he was paying for.

Q. Previous to that time he got a spurious article, according to your testimony?

A. Yes, sir; in a great many instances, not in all cases.

Q. After you signed the resale agreement, was there competition between jobbers in your locality?

A. Absolutely so; the resale agreement did not prevent competition.

Q. Explain a little more fully what you mean?

A. I mean by that that enameled ware is not a finished article; to make it a finished article requires trimmings, brass trimmings, faucets, wastes and other goods that are bound to be added to enameled ware to make it a complete and finished article. The competition was just as keen after the resale agreement went into effect as it was before.

Q. Did the resale plan have any effect on the price at which the plumber sold the enameled ware to the consumer?

THE WITNESS: In reference to competition?

Mr. NOBLE: Yes, or in price.

A. No, sir.

Q. He sold at any price he pleased?

A. Yes, sir; either at cost or at any cost he chose to put on. He was not regulated in any way, shape or form by the resale agreement.

Q. Now, the profit that you made after the resale agreement went into effect, as compared with your business in sanitary enameled iron ware, previous to its going into effect, state what it was?

THE WITNESS: You do not mean the per cent.?

Mr. NOBLE: No.

A. Well, it was better; we did not have the number of complaints about the ware that was sold. We did not have disgruntled owners applying to the plumber, who would take his trade away from us because he would not allow his plumbers to put in seconds, and the resale plan was a benefit to us.

Q. Without regard to the price at which you sold the articles? A. Absolutely.

CROSS EXAMINATION BY Mr. GROSVENOR: 1

Q. Mr. Pierce, from whom did you buy most of your enameled ware before June, 1910?

A. We bought from several, but our largest purchases were made from the Standard Sanitary Manufacturing Company.

Q. Next to the Standard Sanitary Manufacturing Company, who was your largest seller? A. McCrum-Howell.

Q. And after them?

A. The Union Sanitary Manufacturing Company, of Noblesville, I think that is the name.

Q. And after them? 2

A. Probably the Cahill Iron Works.

Q. And after them?

A. I cannot speak further. We did not confine our purchases to any one concern. Our largest purchases were from the Standard Sanitary Manufacturing Company.

Q. Did these four named supply you with the largest part of your enameled ware? A. Yes, sir.

Q. Ninety per cent.? A. I should say yes.

Q. Do you recall in June, 1910, receiving a circular letter from the Standard Sanitary Manufacturing Company of this character (indicating)? A. I do not remember. 3

Q. You have no recollection?

A. I have no recollection whether such a letter was received or not. I know I signed the agreements without any hesitancy for our Company.

Q. Do you recall whether or not you received a letter in June, from the Cahill Iron Works, containing this sentence: "It is necessary for you to execute this contracts before we can sell you sanitary enameled ware." A. I don't remember.

Q. Do you recall whether you received early in June a letter from the McCrum-Howell Company, containing this sentence: "It is necessary for you to execute these contracts 4 before we can sell you licensed sanitary enameled iron ware?"

A. I don't remember; such letters may have come and gone to the buyer's department, but I don't remember.

Q. Do you recall whether you received a letter from the National Sanitary Manufacturing Company about the first of June, containing this sentence: "It is necessary for you to

1 execute this contract before we can sell you licensed sanitary enameled iron ware?"

A. The same answer would apply as to the other manufacturers.

Q. Do you recall whether you received in the early part of June, 1910, from a large number of manufacturers of enameled iron ware, contracts not filled out, which were to be entered into by you with those manufacturers?

THE WITNESS: You mean these licenses which we did sign?

Mr. GROSVENOR: Yes, sir.

2

A. I do remember that; but I don't remember how many there were or from whom.

Q. You also received one from the Standard Sanitary Manufacturing Company, that is a letter from the Standard Sanitary Manufacturing Company?

A. I don't know what you mean by a letter from the Standard Company. I am speaking of the printed contract itself.

Q. Did you receive such a contract from the McCrum-Howell Company to be signed by you?

3 THE WITNESS: Such a printed contract as was signed with the others?

Mr. GROSVENOR: Yes.

A. I presume we did; we continued to buy from McCrum-Howell after this agreement went into effect.

Q. You understood early in June that unless you signed these contracts, that it was necessary for you to sign these contracts to get enameled goods?

A. We did not hesitate to sign the contracts.

Q. But was that your understanding, that it was necessary for you to sign these contracts to get enameled goods?

4 A. That may have been the understanding.

Q. Was it your understanding?

A. Yes, in a general way; yes.

Q. And these four companies supplied you with ninety per cent. of your enameled ware?

A. I should say yes, without looking up the actual record.

Q. What is the character of your business in enameled ware? You have a warehouse in St. Louis and you ship from there to surrounding cities and states?

A. We have warehouses in St. Louis, Los Angeles, San Francisco and Pueblo. 1

Q. Your business is not confined to St. Louis, then?

A. Absolutely not.

Q. In making sales to the plumbers did you observe the prices set out in the price list? A. In enameled ware only.

Q. That is all that this price list covers, is it not?

A. That I don't know.

Q. You did in making these sales to the various states after June, 1910, observe prices laid down in this price book?

A. Yes, sir.

Q. Before June, 1910, the jobbers did observe these prices on enameled goods in this price book? 2

A. Yes, sir; and also after June, 1910.

Q. Do your competitors observe these prices?

A. I don't know anything about our competitors.

Q. Before June, 1910, was the business profitable or unprofitable on enameled iron ware?

A. I can only speak for our house, and with us it was unprofitable.

Q. After June, 1910, did your enameled ware account show better profits?

A. In view of the fact that we were receiving better goods and had less claims. 3

Q. It did, in view of the things you have mentioned?

A. Yes, sir.

Q. Were you present at any meeting of jobbers at which this resale plan was discussed?

A. Well, I have been present at meetings where the resale plan not only on enameled ware but on every other commodity handled by plumbing supply houses was discussed, in a general way.

Q. Were you present at any meeting at which a plan for the fixing of a resale price on enameled ware was discussed? 4

A. Yes, sir.

Q. Where? A. Niagara Falls.

Q. At any other meeting? A. Not that I recall.

Q. Were you at Toledo?

A. Yes, sir; at the Central Supply Association's meeting.

Q. In June? A. Yes, sir.

Q. Were you present when this arrangement was discussed there?

A. I was in and out of the hall while there was some dis-

1 cussion going on. I was not there during the entire discussion.

Q. You were there during part of the discussion?

A. I should say yes.

Q. You understood speeches were being made for and against the proposition? A. I understood that, yes.

Q. Did you hear any one speak in favor of it whose name you can recall?

A. No; I cannot recall any names. As I recall now, this discussion was brought up after a regular meeting of the Central Supply Association, and when that discussion was
2 going on I was down in the lobby of the hotel a good part of the time. I cannot recall specifically whether I heard any certain person speaking for or against the plan. My memory does not serve me on that point.

Q. The plan being discussed in June in Toledo was the same plan being discussed at Niagara Falls in April?

A. Well, this meeting in April at Niagara Falls was not called for any discussion on any resale proposition. During the meeting there was some discussion brought up on the resale plan on enameled ware.

Q. That was before it was put into effect?

3 A. Yes, sir; it was not put into effect until June, and this meeting was in April or March, 1910.

Q. The Toledo meeting was the meeting for discussing the plan that was put into effect, which was considered at Niagara Falls before it was put into effect?

THE WITNESS: I don't understand your question.

Q. Wasn't the same plan discussed at those meetings, although at one meeting it had not yet been put into effect?

A. Well, as I stated, at the Niagara Falls meeting there were a great many subjects discussed, not only enameled
4 iron ware, but a great many things in our line.

Q. By resale plan, you mean a uniform price from the jobber to the plumber? A. Yes, sir.

Q. I mean a fixed price from the jobber to the plumber?

A. No, sir; what I mean is a fixed price from the manufacturer to the jobber and not a fixed price from the jobber to the plumber, but a minimum price at which such commodities might be sold.

Q. In discussing the resale price you mean a price below which the jobber might not drop, but he can go above that?

A. Yes, sir; just as high as he chooses. 1

Q. This price, then, fixes the price below which the jobber might not drop? A. Yes, sir; I so understand it.

Q. When you say, then, that competition existed among jobbers in prices after June 1st, 1910, you mean that there was competition in how far above that price they could go?

A. No, I did not mean that; I mean competition existed after June 1st, 1910, on enameled ware, just as it did before June 1st, 1910, because enameled ware is not sold by the jobber as a fixture by itself. It needs faucets and supplies and trimmings which go to make that fixture complete, on which there was just as much competition. 2

Q. Are you familiar with the terms of this price list?

A. Yes, sir; I think so.

Q. Don't you know that it requires the jobber to itemize all the enameled ware which he sells?

A. It was done in all cases.

Q. Doesn't it attempt to have it done?

Mr. NOBLE: I object to that. The price list is in evidence and speaks for itself.

Mr. GROSVENOR: What was the question?

The last question was then read by the stenographer.

THE WITNESS: Shall I answer it? 3

Mr. NOBLE: The witness need not answer a question which is objected to on this ground. If the other side wants it answered it can insist on it.

Mr. GROSVENOR: Will you read the question again?

The stenographer then read the last question.

Mr. GROSVENOR: Will you answer that?

A. My understanding was that it attempted to have it done.

Q. Did Wayman's auditors ever look over your books to see if you followed out the terms of the contract? 4

A. No, sir.

Q. Did any auditors ever examine your books to ascertain whether you had observed the terms of the license contract?

A. No, sir.

Q. What is a second, Mr. Pierce?

A. It is anything that a plumber can buy to put in in place of a guaranteed article. In other words, it is an article that we, as reputable jobbers, speaking for ourselves alone, would not attempt to sell as a first class article. We sell a great

1 many seconds that are made seconds by handling in our own store that originally came from the manufacturers as a guaranteed article. There may be a chip or a scratch on the rim, or something of that sort.

Q. What is the condition since January 1st, 1911?

THE WITNESS: In what respect?

Mr. GROSVENOR: In the jobbing trade generally in enameled ware. You testified on direct examination that conditions improved in June, 1910?

A. Yes.

2 Q. Well, has there been any change since January, 1911?

A. Yes, if anything they are worse than they were prior to June, 1910.

Q. Is the same trouble respecting seconds found now in the trade? A. Yes, sir.

Q. Can you name the manufacturers who sell the seconds as first-class who should not do so?

A. No, sir; I object to doing so.

Q. Well, will you look at this petition, on pages 5 and 6, and state whether there are any on those two pages?

A. I will answer it this way: We do not buy seconds if

3 we know it.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. I understood the Government inquired whether in making out your bill or invoice of sales in sanitary enameled iron ware that the trimmings, fixtures, etc., were likewise itemized on that invoice?

Mr. GROSVENOR: No, I did not mean that.

Q. Didn't you so understand that question, Mr. Pierce?

A. That was my understanding of it; yes, sir.

4 Q. Now, going back to that question in itemizing these trimmings, faucets, etc., which you described as being necessary to make a piece of enameled iron ware a complete fixture, were you compelled to sell them at any fixed price?

A. No, sir.

Q. You could sell them at any price you pleased?

A. Yes, sir; give them away if you chose.

Q. So in making sales of sanitary enameled iron ware there was competition after June, 1910, as there had been before June, 1910?

A. I answered that question very specifically that there was. 1

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you look on page 2, the heading is "Lump Sum." It reads, "The ware covered by the Price Sheets shall be invoiced by individual items, which are to be billed separately (less all fittings) and it is not permissible to bill collectively several articles in a 'lump sum.'" Did you make out your bills to plumbers in accordance with that provision?

A. Sometimes we did and sometimes we did not.

Q. You understood that it was a condition of the contract? 2

A. I answered that I presumed that was the meaning of it. It was not done in all cases.

Q. Do you know that other jobbers were forced to comply with that provision?

A. I don't know anything about other jobbers.

Q. If you complied with that provision every time you sold a bathtub you would have to itemize on your bills the price of the bathtub as explained on this sheet? A. Yes, sir.

RE-REDIRECT EXAMINATION BY Mr. NOBLE:

Q. And you would keep up the competition you have described by selling in connection with that article the trimmings that went with it? 3

A. Yes, sir; because the tub would not be worth anything without the trimmings that went with it.

Q. So that the competition existed then just the same after June, 1910, as before? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point a recess was taken until two o'clock P. M. 4

1 After Recess.

OTTO F. FELIX, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOBLE:

Q. Please state your name, residence and occupation?

A. Otto Felix; Secretary and Treasurer of the Pittsburgh Supply Company, Pittsburgh.

Q. Does the Company with which you are connected deal
2 in sanitary enameled iron ware? A. They do.

Q. And plumbers' supplies generally?

A. Plumbers' supplies generally.

Q. Did you receive a letter from the Department of Justice signed by Mr. Joseph Darling, asking you if your Company was forced to sign a resale agreement on sanitary enameled ware? A. Yes, sir.

Q. Were you forced to sign that agreement?

A. We were not; no.

Q. Why did you sign it?

A. I thought it was an advantage to us to sign it?

3 Q. What advantages were there which induced you to sign it?

A. The main advantage was that I took it for granted that they would increase the quality of the goods.

Q. And after you took that license agreement, was the quality improved?

A. I so understand from the sales department.

Q. Did you have as many complaints as before?

A. Nothing like as many.

Q. From goods that you did sell?

A. Nothing like as many.

4 Q. So that as between the time anterior to the time of signing of the jobber's license agreement and after the jobber's license agreement went into effect, there was a difference in the complaints that you got in regard to the quality of the goods? A. Considerable.

Q. Before it went into effect, did you find yourself with seconds on your hands sold as seconds or high grade tubs?

A. We had more or less trouble with high grade goods, and the inference was that we got seconds instead of firsts.

Q. After the agreement went into effect, will you tell me whether or not you got any seconds then? 1

A. Not to my knowledge.

Q. What is the difference between a second and a guaranteed tub?

A. I should say that a second was a defective article and a guaranteed tub or a first was a first class article.

Q. Prior to the license agreement going into effect, did you receive sanitary enameled iron ware which was sold to you as guaranteed first class ware which was in fact defective?

A. As I said before, we took it for granted that they were, because we had so many complaints. 2

Q. After the first of January, 1911, will you tell me what was the condition of the trade in sanitary enameled iron ware with respect to the goods?

A. In 1911—well, I can't say much about it. I am not close enough to testify that there was much difference.

Q. Did you have a stock of goods on hand at the time this resale contract went into effect? A. We did.

Q. As compared with the goods which you got during the resale plan what have you to say of those goods which you had on hand? 3

A. I felt at the time the resale price went into effect we would most likely get better quality goods and if we could have made a change at even a greater cost to us for handling, we would have gladly, for the benefit of our reputation, exchanged them for goods that we got later, because we thought our customers would be better satisfied.

Q. After the resale plan went into effect, was there competition still between jobbers? A. Yes, sir.

Q. The resale plan did not contemplate your putting any price on the faucets and things that went with the sanitary enameled ware, did it? A. No. 4

Q. So that in selling a plumber a piece of sanitary enameled iron ware with the necessary trimmings, were you obliged to sell at any fixed price on the whole order? A. No.

Q. You could sell all the trimmings except the sanitary enameled iron ware at any price you pleased, is that correct?

A. Yes, sir.

Q. Was there any difference in competition, as far as you know?

A. Not that I noticed, no. It is just as keen as ever, unfortunately.

Q. Was the plumber obliged to sell his goods to the consumer at any fixed price? A. No.

Q. He could sell at any price he pleased?

A. Yes, we did not give him any fixed price.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What is your position with the Pittsburg Supply Company? A. Secretary and Treasurer.

Q. Have you charge of the selling end of the business?

A. I have general charge of the business.

Q. With what Company do you do the larger part of your sanitary enameled iron ware business?

A. Naturally we do a great part of it with the Standard Sanitary Manufacturing Company, located near home here, in this district and we also buy extensively—have you the names there on that list, I can give them from that.

Counsel then handed a list of the defendants to the witness.

THE WITNESS (continuing): You might say that we buy less than half from the Standard Sanitary Manufacturing Company.

Q. This was prior to June, 1910? A. Yes, sir.

Q. Please confine yourself to the time just preceding June, 1910?

A. The Standard, for one; United States Sanitary Manufacturing Company; the Wheeling Enameled Iron Company; we bought most of our material from them.

Q. Did you buy ninety per cent. from them, would you say?

A. I should say that we bought very close to ninety per cent. from them.

Q. In June, 1910, do you recall receiving a letter similar to Petitioner's Exhibit No. 186 from the Standard Sanitary Manufacturing Company?

A. I do not remember that particular letter (indicating) but I recall that we had a license sent to us.

Q. You recall that you had a license agreement sent to you? A. Yes, sir.

Q. Do you recall receiving a notice from that Company stating that it was necessary for you to execute this contract

before they could sell you licensed sanitary enameled ware? 1

A. No, I do not.

Q. Do you recall receiving contracts about the same time from the Wheeling Enameled Iron Ware Company?

A. I suppose so, because we bought from all of them.

Q. And these letters contained these contracts?

A. Yes, sir.

Q. Did you understand that in order for you to continue buying you must execute these contracts?

A. I don't know, because we were buying from them anyhow.

Q. Did you understand that it was necessary for you to 2 sign one of these contracts in order for you to obtain these goods from them thereafter?

A. I do not know, because we were buying from them then, and we would naturally be glad to continue.

Q. Did you understand that it would be necessary for you to sign these contracts in order for you to obtain goods from these manufacturers from whom you had been buying thereafter? A. That was the inference.

Q. What inference?

A. That we would be obliged to sign the contract in order to secure their goods. 3

Q. You did understand that?

A. I signed it with that in view, I suppose. I never read the letter, and I never read the contract, I might say.

Q. Now, what is a second? A. A defective article.

Q. A second is a defective article, whatever may be the cause of the defect?

A. I should think so, yes.

Q. After you had signed the contract, did you observe the price list in making the sales to your customers?

THE WITNESS: In enameled goods?

Mr. GROSVENOR: Yes. 4

A. I think we did; yes, sir.

Q. Where are your customers located, generally?

A. Within a radius of 150 and 200 miles.

Q. Of Pittsburgh? A. Yes, sir.

Q. They are then in other states than Pennsylvania?

A. Yes, sir.

Q. With whom did you sign contracts in June?

1 A. We signed with the ones I mentioned there, and a few others.

Q. And in buying goods from those manufacturers, were you given the prices mentioned in those price lists?

A. We were given that price list.

Q. What was the chief advantage of this price list?

A. We figured that they would likely give us a better quality goods and that would cost us a great deal less trouble. Previous to that time competition was so keen among the manufacturers that they would give us almost any kind of an article that would stand boxing.

2 Q. Wasn't one of the advantages that it fixed the resale price?

A. Not any particular advantage, but it saved us money in not having to take back defective ware.

Q. Were you present at any meetings in the early part of 1910, when this resale arrangement was discussed?

A. No, sir; I was not.

Q. When did you first discuss that arrangement?

A. I heard about it but I was not at any meeting.

Q. You had on hand quite a supply of goods when the arrangement went into effect? A. Unfortunately, yes.

3 Q. And did you sell them at the resale prices set out here?

A. I take it that we did.

Q. So that you made no distinction in the sale of your articles between those received before June 1st, and those received after June 1st? A. No.

Q. If there had been this substantial difference in quality between the goods that you testified to on your direct examination, wouldn't you have made that difference?

A. I remarked that I would gladly have exchanged the goods that we had in stock for the new class of goods. I took it the manufacturers would give us a better quality

4 goods.

Q. But you sold the old goods at the same prices as the new goods? A. I suppose most of it.

Q. Now, you testified about the number of complaints. Can you state anything more definite about that?

A. I know that several times I took up the question of enameled ware with our sales department and the letters would pass over my desk with complaints, and I questioned whether it was advisable for us to handle enameled goods.

Q. This was prior to June, 1910?

A. Yes, sir; prior to June, 1910; I questioned whether it 1
was advisable for us to handle enameled goods, because we were handling them at a loss.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM IVY, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

2

DIRECT EXAMINATION BY MR. NOBLE:

Q. Will you state your full name, age, residence and occupation?

A. William Ivy, President of the Monument Plumbing Supply Company.

Q. Do you deal in sanitary enameled iron ware?

A. Yes, sir.

Q. And plumbing supplies generally? A. Yes, sir.

Q. Did you or your Company receive a letter from the Department of Justice, signed by Mr. Joseph Darling, and asking you whether you were forced to sign a resale contract 3
relative to sanitary enameled iron ware?

A. I don't know whether it was signed by Mr. Darling, but we received such a letter from some Department of Justice of the United States.

Q. Did you receive a resale license agreement for the sale of sanitary enameled iron ware under the Arrott patent?

A. Yes, sir.

Q. Were you forced to sign it? A. No, sir.

Q. Why did you sign it?

A. So I could get better quality goods instead of getting into competition for cheaper quality goods, so that I could 4
go in for better quality goods.

Q. Did you consider—

A. I considered that necessary, that the enameled ware business be put on that basis.

Q. Comparing enameled goods that you dealt in prior to June, 1910, and thereafter, that is after the agreement went into effect, was there any difference in the quality of the goods?

1 A. Yes, sir; considerable. We can only judge that by the quantity of goods returned to us by our customers. After it was put into effect, some two or three months, we began to see that there was less complaint than there previously had been.

Q. Now, since January 1st, 1911, has there been any difference in competition in the sale of sanitary enameled iron ware? A. No, sir.

Q. Have you noticed any difference in the quality of the goods you have received since January 1st, 1911?

A. Yes, sir; I have. The quality of the goods is much
2 inferior, judging from the quality of the goods that we have now. We do not see the goods and they are not opened until they arrive on the job. During the resale agreement plan we felt morally certain that anything we sent out would stay.

Q. In other words, the guarantees under which you bought them, did you think they were good and did you find them good?

A. Yes, sir; we thought them good and they were good.

Q. What do you understand in the trade as a second?

A. An imperfect article, something that will not stand the test of time.

3 Q. What do you understand a guaranteed article to be?

A. An article that will stand forever, or throughout a life of reasonable length.

Q. During the time the resale agreement was in effect, did you have any seconds sold to you? A. No, sir.

Q. Was the quality of the guaranteed ware better than it was before June 1st, 1910? A. I so considered it; yes, sir.

Q. Since January 1st, 1911, what have you to say as to the quality of the so-called guaranteed goods?

A. It is not up to what it was.

Q. During the resale period?

4 A. During the resale period.

Q. Did you make any more money in the dealings that you had in sanitary enameled iron ware which you purchased from licensed manufacturers during the period of the resale agreements than you made upon the sale of enameled ware before that time?

A. I made more under the resale agreement.

Q. What was that due to?

A. We had less complaints; didn't have customers holding up our accounts and less claims for defective goods.

Q. And those things helped to lower the price of the goods? A. Yes, sir. 1

Q. Was there competition between jobbers during the resale period? A. Yes, sir; just as keen as ever.

Q. Why?

A. Because a piece of enameled ware is not sold except when complete, that is when we add the necessary materials and things to make it a complete fixture, and when I figure enameled iron ware, my fixtures were added to that same per centage of cost, to which I added my percentage of profit which I had previously had in selling goods.

Q. So you were able to put those trimmings in on such terms as you wanted to and so compete with the other jobbers? A. Yes, sir. 2

Q. Was there any difference in the price at which the plumber sold to the consumer? A. None whatever.

Q. As I understand the consumer got a better article then than either before or after that period?

A. In my opinion; yes, sir; he did.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Ivy, who supplied you with the large amounts of enameled ware that you purchased? 3

THE WITNESS: Previous to—

Mr. GROSVENOR (interrupting): June, 1910.

A. Well, previous to October 1st, 1909, the Standard Sanitary Manufacturing Company supplied the largest portion. After April, 1910, the L. Wolff Manufacturing Company.

Q. In June, 1910, please name the chief manufacturers of enameled ware that supplied you?

A. L. Wolff Manufacturing Company, the Standard Sanitary Manufacturing Company and the Cahill Iron Works. 4

Q. Did they supply you with ninety per cent. of the enameled ware that you bought? A. Yes, sir.

Q. Did you receive about the beginning of June, 1910, a letter like that (indicating), similar to Exhibit No. 186?

A. I cannot recall receiving the letter. I can recall receiving the printed contracts.

Q. Such as the jobber's license agreement? A. Yes, sir.

Q. You received those from the Standard Sanitary Manufacturing Company? A. Oh, from at least half a dozen.

Q. You received them from the Standard Company?

A. Yes, sir.

Q. And the L. Wolff Manufacturing Company?

A. Yes, sir.

Q. And the Cahill Iron Works? A. Yes, sir.

Q. Do you recall letters accompanying those contracts saying that it was necessary for you to sign those contracts in order to obtain licensed sanitary enameled iron ware?

A. I don't recall those letters.

Q. Did you understand that it was necessary for you to sign those contracts before you could get licensed enameled ware? A. I so considered it.

Q. You so considered it? A. I so considered it.

Q. That is you considered that you had to sign them?

A. Yes, sir; you are speaking of the licensed ware, I believe.

Q. I am speaking of any ware from those manufacturers.

A. No, not any ware.

Q. Any enameled ware?

A. No, any licensed enameled ware. They may have made other ware.

Q. Did you know of any such?

A. Yes, sir; they made specialties.

Q. Specialties of what kind?

A. A man might want something special made that had nothing to do with the plumbing business.

Q. But the general line of goods—

A. The general line of enameled ware I considered it necessary to buy that licensed enameled ware.

Q. Do you sell in other States than Missouri?

A. Yes, sir.

Q. After you signed the contract did you observe this price list? A. On the enameled ware I observed it.

Q. On all your sales of enameled ware to plumbers?

A. Yes, sir.

Q. And in your purchases from these manufacturers the prices that you paid were governed by this price list?

A. Yes, sir.

Q. With whom did you sign contracts?

A. Let me see the list. The Standard Sanitary Manufacturing Company; the L. Wolff Manufacturing Company; the Cahill Iron Works; the Day-Ward Company, and the McCrum-Howell Company, and I think with the Union Sani-

tary Manufacturing Company, if they are the parties who are at Noblesville, Indiana. 1

BY MR. NOBLE:

Q. That is where they are. There are some others on the other page.

THE WITNESS: And the Wheeling Enameled Iron Company also.

BY MR. GROSVENOR:

Q. During this period, from June, 1910, to January, 1911, did you buy enameled ware from any manufacturers other than these stated here? A. No, sir. 2

Q. You then observed that term of the contract which provided that you could not buy from manufacturers not named in the contract?

A. No, because I got no orders for any other class of goods.

Q. You knew of that clause in the contract which you signed, didn't you?

A. Yes, but I would not have respected it in any way.

Q. Did you have on hand a supply of this ware in June, 1910? A. A very small stock; yes, sir. 3

Q. And did you sell that at the prices in the price list?

A. I did.

Q. Did you make any discrimination between those goods—

A. It was impossible to make any discrimination, because all the goods come packed alike, and it was impossible to sell them separately.

Q. You did not think the difference in the goods warranted a sale at a different price?

A. Yes, sir; I called a meeting of the boys and asked them if we should not return them even at a loss. 4

Q. You did sell those goods, though, at the price list prices? A. Yes, sir.

Q. The same as the new goods? A. Yes, sir.

Q. You say since January, 1911, there has been a drop in the quality? A. I say so; yes, sir.

Q. I suppose you refer to some of the manufacturers from whom you have been buying? A. Yes, sir.

Q. Who are those?

A. The L. Wolff Manufacturing Company—

Q. You include, then, those names that you mentioned?

Mr. NOBLE: I don't think you should compel the witness to identify the names of the people from whom he buys. It is not necessary.

A. Yes, I include among the manufacturers those names that I mentioned that I was buying from previously.

Q. Do you know whether or not they have discontinued using the Arrott patent since January, 1911?

A. I have no means of knowing that; no, sir.

Q. Respecting complaints, how many complaints have you had since January 1st, 1911?

A. I have not kept track of the number, but it is a daily affair to have some plumber call me or my assistants up and tell me that they have a defective piece of ware delivered a day or two before and to come out and get it. There have been as high as two or three complaints of that kind a day.

Q. You testified on direct examination as to a number of things that enabled you to make more money on your enameled ware business from June, 1910, on. Wasn't one of the items the fact that you were getting prices established by that price list?

A. No, that was not it. While I quoted the price, that was only one portion of the finished article only to which I added the cost of the other articles, and to all I added my per cent. of profit.

Q. That is you sold your trimmings higher?

A. I sold the trimmings lower so that the same article brought me about the same price as before.

Q. Did you observe that provision in the price list that the different wares should be itemized? A. No.

Q. Did you attend any meetings of jobbers in 1910 at which the resale proposition was considered?

A. I was at one meeting at Toledo.

Q. That was in June?

A. I think it was about the middle of June.

Q. The Central Supply Association?

A. The Central Supply Association meeting.

Q. And there was a discussion—

A. After the regular meeting was over and to which I was not invited, but being in the room I stopped and listened to it.

Q. And you heard the speeches? A. Yes, sir.

Q. Some spoke in favor of it? A. Yes, sir.
Q. And some against it?
A. Yes, sir; some against it. Those who spoke in favor of it spoke particularly because of the profit it gave them on their goods. Some had had little associations and they had been able to sell higher, but the resale price made them all sell at the same price.
Q. And those were the ones who objected to the resale price? A. Yes, sir; at that meeting.
Q. That was not your situation? A. No.
Q. Some manufacturers were present at that meeting?
A. Yes, sir; I noticed several.
Q. Mr. Torrance was present?
A. Yes, sir; Mr. Torrance was present.
Q. And he spoke in favor of the proposition?
A. I don't remember what he spoke of because I did not stay very long.
Q. Have you any recollection of what he said? A. No, sir.
Q. Did he speak in opposition to the proposition?
A. No, sir; I don't think I heard him speak at all. I was in and out.
Q. Was Mr. Wolff speaking about it?
A. I don't remember.
Q. Mr. Cline—do you remember him saying anything?
A. No, I believe the only one I remember speaking about it was a gentleman named Mr. Kohler.
Q. Mr. Kohler? A. Yes, sir.
Q. Was he in favor or against it? A. He was against it.
Q. Do you recall the name of any manufacturer who spoke in favor of the proposition?
A. No; I do not remember being in there to listen at all, only a very short while.
Q. Were you at any other meetings? A. No, sir.
Q. The St. Louis jobbers signed up quickly?
A. I haven't any idea; I can only speak for myself.
Q. Early in June, didn't you? A. Early in June.
Q. Can you give the exact date?
A. No, I cannot give the exact date.
Q. Were you ever at any meeting in Chicago in June, and July at which the same jobbers were present and discussed the agreement?
A. I have been at nearly every meeting of the Central

1 Supply Association, but if there was such a matter spoken of, I do not remember it, in Chicago.

Q. I don't mean the Central Supply Association, but just a few Western jobbers? A. No, sir; I do not recall it.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

THOMAS C. BOSWELL, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing
2 Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOBLE:

Q. What is you full name, residence and occupation?

A. Secretary of the Aird-Donn Company.

Q. What is their business?

A. Plumbing and setting and fitting supplies.

Q. Do you deal in sanitary enameled iron ware?

A. Yes, sir.

Q. Did you sign a license agreement to buy sanitary enam-
3 eled iron ware from Wayman or any of the licensed manufacturers? A. I believe we did.

Q. Did you receive a letter from the Department of Justice asking if you were forced to sign that agreement or not?

A. We did.

Q. Were you forced to sign it? A. Positively no.

Q. Why did you sign it?

A. Why did I sign it—simply because I thought it was the best thing that ever happened for the benefit of the people who sell enameled iron ware and principally because the man who buys it and installs it in a house or office building would
4 get what he was paying for.

Q. How was that brought about under the resale plan?

A. Before the resale plan went into effect, an architect would specify a certain class of fixtures. An unscrupulous plumber would come around and buy almost anything that he wanted to and put it in. We were perfectly helpless. After the resale plan went into effect, we discontinued selling seconds and sent a circular letter around to all our trade, stating that hereafter we would not handle the non-guaranteed goods.

Q. What is your understanding in the trade of what a

second means and what a guaranteed article or a first-class article is? 1

A. My idea of a second is anything that is poor or bum or defective—not necessarily defective, but any cheap thing that is way below the standard. That is my idea of a second. A guaranteed article is anything that the manufacturers will stand behind.

Q. After the license agreement went into effect, did the manufacturers guarantee their enameled ware to be what it purported to be? A. Yes, sir.

Q. Was that of benefit to the consumer? A. Yes.

Q. Was it also of benefit to the jobber? A. Yes, sir. 2

Q. You had more or less trouble after the resale plan went into effect in dealing in sanitary enameled iron ware, did you not? A. Less trouble.

Q. What had your trouble before that been?

A. Our troubles were principally because we went out and bought anything that we could get at any old price, and we did not care but sent it out. After the resale plan went into effect we bought nothing but strictly first-class goods.

Q. Did the difficulties which you had previous to the resale plan went into effect yield you more or less profit than after the resale plan went into effect? 3

A. I made more money out of enameled ware during the resale plan, because I had a great deal less trouble with the goods that I sold.

Q. How does that affect the question of the amount of money that you made?

A. I can explain it this way: I have on hand at the present time quite a large amount of enameled ware which I bought previous to the resale agreement, which is still in my warehouse and which I would not put out during the life of that resale agreement. It is still there, but I am selling it at the present at almost any price I can get. During the resale agreement I tried to buy the best goods I could get and by doing that I saved myself an immense amount of trouble and annoyance and the trouble is where we lose all our money. The profit on enameled ware at any time is not very large, and if you have any trouble with it in replacing it and regrading it and sending it to the warehouse again, the profit is whacked off two or three times over. 4

Q. So you sustain a loss?

A. The goods are sold at a loss rather than a profit.

1 Q. So that the profit you made during the period of the resale plan is irrespective of the price, but due to the reasons that you mentioned, is that correct? A. Yes, sir.

Q. Was there any competition between you and other jobbers in your community during the period of the resale plan?

A. Just as much as ever.

Q. How did that come about?

A. Simply because if you took a lavatory or bathtub or any article of enameled ware, you had to put trimmings to it too, so that the goods can be sold at any price a man wants to sell them for.

2 Q. Was the plumber obliged to sell his goods to the customer at that price under this resale plan? A. No, sir.

Q. The goods you sold were purchased from the licensed manufacturers, were they not? A. Yes, sir.

Q. Mr. Boswell, during the time of the resale plan did you sell as many goods before as after? Did the plumbers buy as many goods?

A. I don't know whether there was any difference. I did not have that in my mind.

Q. No plumber ever refused to buy because of the existence of the resale plan, as far as you know?

3 A. No, sir; I did not notice anything about it.

Q. Among the losses that you sustained, did not some arise in this way: After a piece of sanitary enameled ware was installed, instead of taking it back they sometimes left it installed and made a claim against you for damages or for a reduction in price?

A. That is often the case. Plumbers will take advantage of you every day in the week. They will beat you out of your eye teeth. If a fellow had false teeth, he would steal them from you. They are worse than the lawyers. He never puts his hand in his own pocket; he always puts it in somebody

4 else's pocket; the plumber does both.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Who were the chief manufacturers who supplied you with enameled ware in June, 1910?

THE WITNESS: Do you mean June, 1910, or previous to June?

Mr. GROSVENOR: Before you signed the contract?

A. Any fellow that I could find that was gol-darned near

bankrupt that I could get goods from. They would come around and say, "Boswell, I have two or three carloads of goods and you can have them for so much cash." That was the fellow that I was always looking for. 1

Q. Now, to get it more specific, will you name the manufacturers from whom you bought the largest amount of enameled ware, generally, before June 1st, 1910?

THE WITNESS: You don't want me to answer that question, because you want to be fair and honest and if I answer that question several of my best friends that I helped to keep out of bankruptcy would get in trouble. I dare not say so to you, though, because they will say it is a breach of confidence if I tell you. They are on that list, though. 2

Q. This is nothing of a private character; I want to have the names of the prominent manufacturers from whom you were buying in June, 1910? A. I would rather not.

Q. Were you buying from the Standard Sanitary Manufacturing Company?

A. Yes, sir. Please don't ask me any more.

Q. Did you buy most of your supplies from the Standard Sanitary Manufacturing Company? A. Yes and no. 3

Q. Which?

A. Both. I cannot answer that question honestly and use either word.

Q. Did you buy in large amounts from them?

A. Well, they never needed money very bad, and when I could not get some other poor fellow that needed money, I would go to them.

Q. In June, 1910, with what manufacturers did you sign the contract?

A. I want to answer that this way: I was going to New York one morning in a hurry. The President of our concern said: "Say, Tom, here are some contracts for enameled ware, will you sign them?" And I said: "Mr. Aird, I haven't got time, but sign all of them." 4

Q. What is your position with the Aird-Donn Company?

A. Secretary.

Q. Are you in charge of the selling end?

A. I do pretty nearly everything.

Q. With whom did you sign these license contracts?

A. I could not say.

1 Q. Did you sign with the Standard Sanitary Manufacturing Company? A. I could not say.

Q. Did you sign with A. Weiskittel and Son Company?

A. I could not answer.

Q. Did you sign with the Barnes Manufacturing Company? A. I cannot answer.

Q. Did you sign with the Cahill Iron Works?

A. I cannot answer.

Q. Can you give me the name of one manufacturer with whom you signed in June, 1910?

A. I cannot. Mr. Aird signed all the contracts that came

2 in.

Q. Can you give me the names of any manufacturers from whom you bought sanitary enameled iron ware after June 1st, 1910, until January 1st, 1911?

A. The Standard Sanitary Manufacturing Company; I think the Cahill Iron Works; I believe the Day-Ward Company. I believe I bought samples from two or three others who came in and said that they had something new. Anybody who said that they had something new I would buy samples from.

Q. Did you receive, in June, 1910, a letter from a number

3 of manufacturers stating that it would be necessary for you to execute these contracts, they being enclosed, before they could sell you licensed sanitary enameled ware?

A. I don't remember seeing such a letter. We may have received them, but I do not remember.

Q. Are you able to give the name of any other manufacturer with whom you signed a contract in June, 1910?

Mr. NOBLE: The witness said that he did not sign any. He said they were signed by Mr. Aird.

Q. I mean by your Company?

A. I cannot, because I was not there.

4 Q. Did you understand in June, 1910, that in order to obtain sanitary enameled iron ware it was necessary for you to sign one of these contracts?

Mr. NOBLE: I object to that question. The witness does not know of his own knowledge.

A. I cannot answer that question to you directly yes or no.

Q. What is the best way you can answer?

A. I stated to you previously, Mr. Aird said that there were some contracts there, and I said, "Sign them." Every person I ever bought enameled ware from, I believe, was on that list, and whether it was important to sign it or not never once entered my mind. 1

Q. Now, after June, 1910, in making sales to your customers did you observe this price list?

A. I want to answer that; I am just tickled to death to answer this question. That book came into our office. I looked it over and I said that it did take me a good many years to learn a portion of the Bible and that I never could learn that book, and I said to the auditor, "You go through our catalog and take every fixture we sell and give me the net cost on that fixture and from that I will compile the selling sheet at which our salesmen will sell the goods;" and from that I made two or three prices. There was not a salesman for the Aird-Donn Company who could carry that book. It was too big and too voluminous. 2

Q. Now, you, like other jobbers, have a catalog, do you?

A. Yes, sir.

Q. Then when this list came in you had your auditor calculate the net cost, you say, of the articles in your catalog?

A. Yes, sir.

Q. In calculating that net cost, did you use this price book? A. Yes, sir. 3

Q. Then from that you say you made a selling sheet?

A. Yes, sir.

Q. That is, you mean the price at which you sell was calculated from this book? A. From my cost.

Q. And from this book? A. No, sir; from my cost book.

Q. How was the selling sheet calculated?

A. From my cost sheet.

Q. Did you use this book? A. No, I got my cost—

Q. You got your cost from that?

A. Yes, sir; and from my differentials. 4

Q. Where did you get your differentials?

A. From that book (indicating).

Q. Then the prices at which your salesmen sold were ascertained from this book?

A. No, sir; from my selling sheet, and they were obtained from my cost book.

Q. Did you ever attend any meeting—

1 A. No, sir; not a meeting. Fellows come up here and lie like troopers, and try to make you believe them—

Q. Well, did you attend any meetings of jobbers in plumbing supplies in the early part of June, 1910, at which resale prices were discussed? A. No, sir.

Q. You were at the Toledo meeting? A. No, sir.

Q. Or at the Niagara Falls meeting? A. No, sir.

Q. Where do you sell your goods?

A. New York, Vermont, Massachusetts, Rhode Island and Connecticut. Those States principally.

2 Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

CHARLES C. STRINGER, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please state your full name, residence and occupation?

A. Charles C. Stringer; Chicago; Secretary of the Re-
3 public Manufacturing Company.

Q. Did your Company sign, during the year 1910, a jobber's license agreement with Mr. Wayman? A. We did.

Q. Did you receive a letter at any time from the Department of Justice asking you if you were forced to sign that agreement? A. We did.

Q. Were you forced to sign that agreement?

A. We were not.

Q. Did you sign it with a number of licensed manufacturers? A. Yes, with about six or seven.

Q. Why did you sign it?

4 A. Because we felt the license agreement would remedy a number of serious conditions that were prevailing on the enameled ware that was being sold at that time. They had been gradually growing worse for the last three or four years.

Q. Did that agreement remedy those conditions?

A. Yes, sir.

Q. What were those conditions?

A. Well, they had reached the point where thirty-five or forty per cent. of the enameled ware was going bad and was

being sold for first class. It was sold A first and upon examination was found to be B quality; this was one of the main reasons why we signed. 1

Q. You were buying it as A quality and on examination it proved to be B quality? A. Yes, sir.

Q. Now, after the resale agreement, as it is called here, went into effect, were the goods which were called guaranteed goods better than before? A. Decidedly better.

Q. How about the seconds?

A. There were no seconds. They were eliminated from the market.

Q. So you dealt in a better quality goods after the resale plan went into effect? 2

A. It is, and we knew what we were buying, and we got what they were sold to us as.

Q. So the ultimate user got what he thought he was going to buy? A. Exactly.

Q. Did your trade change, increase or decrease, after the resale agreement went into effect?

A. Our trade remained the same, if anything a slight increase. Our business has been increasing right along.

Q. Were you able to sell in any different parts of the country than previously? 3

A. Yes, sir; we went into territory that we had never gone into. Under the resale plan we sold in places 2000 miles away from Chicago.

Q. And that was due to the equalization of the freight rate what was called the Zone System?

A. The Zone System; yes, sir.

Q. That enabled you to compete with jobbers out in Arizona, didn't it? A. Yes, sir.

Q. Whereas theretofore you had not been able to do that?

A. Yes, sir. I do not believe there are any jobbers in Arizona, but we were able to compete with other jobbers selling out there. 4

Q. Did you notice any difference in the business which prevailed before the resale agreement went into effect and afterward?

A. We thought there was just as keen competition after it went into effect, but there were other fixtures that had to be figured.

Q. As far as the sale of licensed sanitary enameled ware was concerned, you were not obliged to sell the other goods

1 used in connection with sanitary enameled ware such as trimmings, at any special price?

A. No, sir; we sold at just the same price as before.

Q. How about the trade since January 1st, 1911, that is the condition of the goods?

A. We find conditions worse now than before. Out of a recent purchase of $4,000 worth of enameled ware we have $1,500 worth rejected, and the manufacturer made a fifty per cent. reduction asking us to dispose of it for him.

Q. The plumber, so far as you were concerned, was not obliged to sell the goods to the public at any fixed price under
2 this resale plan, was he? A. None whatever.

Q. Did you have less or more trouble from goods which you had sold, sanitary enameled iron ware, after the resale plan went into effect?

A. We had less trouble. We found all the manufacturers were striving to improve the quality of the enameled ware which they were turning out.

Q. Did you make more or less money after the resale plan went into effect than you had before?

A. We made more money; we consider that we had less expense in changing the enameled ware.

3 Q. And that was without respect to the price at which you bought it or sold it? A. Yes, sir.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. From whom did you obtain the largest amount of your sanitary enameled iron ware prior to June, 1910?

A. The National Sanitary Manufacturing Company; the McCrum-Howell Company; the Standard Sanitary Manufacturing Company; the United States Sanitary Manufacturing Company; L. Wolff Manufacturing Company; and the Cahill Iron Works.

4 Q. From which of those six did you obtain the most?

THE WITNESS: Prior to June, 1910?

Mr. GROSVENOR: Yes, prior to the resale plan.

A. I could not just say, but I think prior to the resale plan—it would be hard to tell; some of the smaller manufacturers were the cheapest—

Q. Well, did you receive about the first of June, 1910, any of these jobber's contracts from the various manufacturers you have mentioned? Do you remember that? A. Yes, sir.

Q. A letter accompanied the contracts stating that it was necessary for you to sign this contract in order for you to obtain sanitary enameled iron ware which was licensed— 1

A. I don't recollect the letter, but I know the contracts came in, and as fast as they came in we signed them and fired them back.

Q. Did you understand that it was necessary for you to execute or sign these contracts in order to obtain licensed sanitary enameled iron ware?

Mr. NOBLE: I object to the witness' understanding.

A. We never had any understanding. We could not sign those contracts fast enough, though, because as soon as they came in we signed them and sent them out, because we thought they would be of great benefit to us. 2

Q. How large a business in sanitary enameled iron ware does your Company do?

A. In the neighborhood of $150,000 or $200,000 worth annually.

Q. This purchase of $4,000 worth which you testified to, was since January, 1911, was it, from those six manufacturers you have named?

A. It was from one of those manufacturers.

Q. Do you sell outside of Chicago? A. Yes, sir. 3

Q. You sell outside of the State of Illinois? A. Yes, sir.

Q. In making your sales during the resale period did you observe this price list which is known as Petitioner's Exhibit No. 133?

THE WITNESS: On enameled ware?

Mr. GROSVENOR: Yes.

A. Yes, sir; we did.

Q. And the price at which you bought from the manufacturers with whom you signed contracts was governed by this list also? A. Yes, 4

Q. You sold, then, in different zones, didn't you, besides the zone in which Chicago was situated? A. Yes, sir.

Q. Then, the price at which you sold in the different zones was always governed by this book?

THE WITNESS: "Is" or "was?"

Mr. GROSVENOR: Was, during those six months?

A. The freight rate governed the price on the enameled ware billed in the different zones.

Q. You calculated what the price in any particular zone was by referring to the discounts as set out for that zone in this book?

A. Yes, because we did not go to the trouble of figuring out the freight. We took it from the book and that figured it out for us.

Q. Were you present at any meeting of jobbers in 1910, at which this resale agreement was discussed?

A. No, sir; I was not.

Q. Were you present at the Toledo meeting? A. No, sir.

Q. Did your Company sign these agreements about the first of June, 1910?

A. Just as soon as we received them we signed them.

Q. You testified that there was no difference in competition between the jobbers after you signed the agreement. Is it not a fact that the price at which every jobber sold that signed the agreement was determined by this price list?

THE WITNESS: Will you read the question, please.
The last question was then read by the stenographer.

A. I cannot tell what the other jobbers sold by. We made our prices according to that book.

Q. If all the jobbers who signed this contract made their prices according to this book, wouldn't that eliminate all competition?

Mr. NOBLE: That is a hypothetical question. The witness need not answer.

A. I couldn't tell that. I don't know what the other jobbers were doing.

Q. You testified as to competition, on direct examination, and—

A. I said there was just as much competition after the resale price went into effect as prior to it.

Q. That is in getting business?

A. In getting business and in prices.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Do you know of any reason why the large part of the enameled ware which was sold to you was said to be defective? Did you have it explained to you?

Mr. GROSVENOR: That is this $4,000 bill?
Mr. NOBLE: Yes.

A. I understood the manufacturer was experimenting with a new grade of enameling powder. 1

BY Mr. GROSVENOR:

Q. Who gave you this information?

A. The manufacturer.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FREDERICK W. ZANDER, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows: 2

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please state your full name, residence and occupation?

A. Frederick W. Zander, Buffalo, New York; President of the Zander Plumbing Supply Company.

Q. Do you deal in plumbing supplies? A. Yes, sir.

Q. Does that include sanitary enameled iron ware?

A. Yes, sir.

Q. Did you sign a license agreement relative to the sale of sanitary enameled iron ware in June, 1910? A. I did. 3

Q. Were you forced to sign that? A. We were not.

Q. Did you get a letter from the Department of Justice signed by Mr. Joseph Darling of the Bureau of Investigation, inquiring whether you were forced to sign a license agreement? A. I do not recall it.

Q. Why did you sign this license agreement?

A. Because we believed in a fair adjustment of prices, and we did that because we knew the people we were doing business with, as it later turned out to be.

Q. Had the quality of sanitary enameled iron ware been satisfactory to you previous to the contract going into effect? 4

A. We are a new concern, just having gone into the business a year ago last January, and we had not received much goods.

Q. Has the quality of sanitary enameled iron ware which you have purchased since January, 1911, been what it was from June 1st, 1910, until December 31st of last year?

A. I cannot say as to that. It has not been a long period and we had a very large stock on hand at the time.

1 Q. And you have not been able to work it off yet?

A. No, sir.

Q. You were not forced to sign this agreement, but signed it because you thought it was a good thing to do?

A. Yes, sir; we were not forced to sign it.

Q. And you are familiar with the business through having been connected with some sanitary manufacturing company?

A. With the L. Wolff Manufacturing Company for fifteen years.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Who were the manufacturers that you were buying from in June, 1910?

THE WITNESS: In June, 1910?

Mr. GROSVENOR: Yes, before you signed the agreement?

A. We have confined our purchases almost entirely to the Standard Sanitary Manufacturing Company, with the exception of some fixtures and goods that we bought from Kohler and one or two others.

Q. When did you buy from Kohler?

3 A. We bought from Kohler in February and March and some of the deliveries were made in May and July.

Q. 1910? A. Yes, sir.

Q. But your largest purchases were from the Standard Company?

A. From the Standard Sanitary Manufacturing Company.

Q. Are you a jobbing house of the Standard Sanitary Manufacturing Company? A. No, sir; we are not.

Q. You have no connection with it?

A. Absolutely no connection, and under no obligations to them in any way.

4 Q. Are they interested in your business? A. No, sir.

Q. Or are any of their officers? A. No, sir.

Q. You testified on direct examination, "We signed it because we believed it would result in a better adjustment of prices." What did you mean by that?

A. I meant by that that I knew that some of the enameled ware being put on the market was not made as good, because it could not be furnished at the prices prevailing, and we felt if the manufacturers got the price they were entitled to that they would improve their goods.

Q. In other words, the license agreement provided for better prices to the manufacturer, in your opinion? 1

A. In my opinion, yes, sir.

Q. I thought that is what you said.

A. I think it would because they would have less trouble with their ware.

Q. Wasn't there any increase in prices?

THE WITNESS: On what, enameled ware particularly?

Mr. GROSVENOR: That is what we are talking about in this examination. 2

THE WITNESS: Thank you.

Mr. GROSVENOR: Will you read the question?

The last question was then read by the stenographer.

A. There was. Pardon me, there was an increase on some of the goods, and some prices were lowered. As I said before there was a fair adjustment of prices, as we thought, which made it possible to give the public good goods at a fair price.

Q. In June, 1910, did you receive a series of letters from the different manufacturers enclosing printed contracts?

A. I do not recall having received any letters, but we received contracts, quite a number of them. 3

Q. With what companies did you sign?

A. With the L. Wolff Manufacturing Company, the Standard Sanitary Manufacturing Company, the United States Sanitary Manufacturing Company, the Cahill Iron Works and perhaps one or two others. I am not certain about that.

Q. Did you understand that it was necessary for you to execute or sign those contracts in order to obtain licensed sanitary enameled iron ware?

Mr. NOBLE: I object to what the understanding was. Counsel has no objection to inquiry by the Government as to the witness' knowledge. 4

Mr. GROSVENOR: Just read the question, please.

The last question was then read by the stenographer.

A. I did not give it a thought, as I explained to you before, we signed because we believed it to be a good proposition.

Q. After you signed the contracts did you sell your ware according to the prices established by this price list?

A. We did, the enameled ware.

Q. Your enameled ware business extends outside of Buffalo? A. It does; yes, sir.

Q. Through what places?

A. Through New York State, part of Pennsylvania, and into Vermont and Connecticut.

Q. Were you present at any meetings in the early part of June, 1910, when this license agreement was discussed?

A. Yes, sir.

Q. Where?

A. I was present at a jobbers meeting at Niagara Falls.

Q. In April?

A. Yes, sir; but I do not remember anything about the resale prices being discussed at that time. In fact, I was only there half an hour.

Q. At which meetings were you present where it was discussed?

A. Well, there were two or three committees, but I cannot remember which one; this was the formation of a committee.

Q. At a meeting in New York?

A. No, sir; at Niagara Falls. Which do you refer to?

Mr. GROSVENOR: I am trying to find out at what meeting you were present at which this resale plan was discussed.

Mr. HEATH: Do you mean the licensing agreement or the resale agreement?

Mr. GROSVENOR: I mean the resale agreement which is the subject matter of this suit. My question is confined to the enameled ware business.

THE WITNESS: Exactly.

Q. At what meeting of jobbers or manufacturers were you present? A. At Toledo.

Q. In June? A. Yes, sir.

Q. That was the Central Supply Association meeting?

A. The Central and Eastern Supply Associations meeting.

Q. Were you present when this discussion was going on pro and con with reference to the license contracts?

A. I heard something of it. I was not present all the time.

Q. Whom did you hear speak in favor of it? Did you hear Mr. Torrance speak in favor of it?

A. No, I do not recall that I heard Mr. Torrance.

Q. Or Mr. Wolff? A. I heard Mr. Wolff say something.

Q. Was he in favor of it? A. I don't remember. 1

Q. Did you hear Mr. Clifford?

A. No, sir; Mr. Clifford was not present.

Q. Now, can you remember anything about what was said?

A. The resale was discussed in a general way and a great many of the jobbers felt that something should be done to improve the conditions. The discussion was along general lines.

Q. The conditions as to prices were to be improved?

A. Improve the conditions as to quality, particularly.

Q. And also as to prices? A. Yes, sir; also as to prices.

Q. The resale arrangement had in mind two things, didn't it, prices and quality? 2

Mr. NOBLE: I object to the question. This witness testified from his own knowledge, and he cannot testify from the knowledge of other people. It is not proper to put the question in such a form.

Mr. GROSVENOR: Testify from your own knowledge only. Wasn't one of the advantages the regulation of prices?

A. I don't know anything about that. Haven't I stated that I thought the resale agreement was a good proposition because it would be possible for the manufacturers to give us better goods and the customer would be benefited as well as anybody? 3

Q. Where does the jobber come in on the advantages?

A. He does not have the trouble with the returned goods and trouble with replacing and so on. Profits on enameled iron ware are very, very small and are today; there is less profit than you find in any other line.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

STANLEY E. HUNTING, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

1 A. Stanley E. Hunting, President and Manager of the Hunting Company; residence, Watertown, New York.

Q. Does your Company deal in plumbing supplies?

A. It does.

Q. Including sanitary enameled iron ware? A. Yes, sir.

Q. Did your Company sign one of these agreements during the year 1910 with licensed manufacturers of sanitary enameled iron ware? A. Yes, sir.

Q. Did you receive a letter at any time from the Department of Justice signed by Mr. Joseph Darling, asking if you were forced to sign those contracts? A. Yes, sir.

2 Q. Were you forced to sign them? A. No, sir.

Q. Why did you sign them?

A. Well, we thought it to the best interest of the jobber, the plumber and the consumer.

Q. Now, will you explain yourself a little more fully, giving your reasons for what you have just said?

A. Well, the enameled iron ware was subject, prior to June 1st, to being defective lots of times, and we used to get a great many labor charges and goods coming back made the profits comparatively small, and we felt that if the manufacturer would give us a better class of goods that we would

3 perhaps have somewhat better net results ourselves also.

Q. After the resale plan, as it is called here, that is this jobber's license agreement, went into effect, did the quality of the sanitary enameled iron ware which you purchased improve? A. In my judgment it did.

Q. Did you have as many difficulties or complaints from your purchasers after that as you had had before?

A. No, we did not.

Q. How about seconds?

A. Well, we did not handle any seconds or buy any seconds after the resale arrangement went into effect.

4 Q. What do you understand in the trade as an A article or a B article or a second?

A. Well, we understand an A article to be an article absolutely guaranteed to be perfect, and a B article to be one that is imperfect.

Q. Since the first of January, 1911, what can you say as to the quality of enameled ware which has been put on the market by some manufacturers with whom you previously dealt?

A. In my judgment it has not been as good as it was prior to that time. 1

Q. Did you notice whether there was any difference in competition between you and other jobbers after the resale plan went into effect than before? A. No, sir.

Q. What? A. No, no difference.

Q. Was there anything in your license agreement which required you to charge any specified prices for the trimmings, which were sold in connection with an article of sanitary enameled iron ware? A. No, sir.

Q. So you sold those at any price you pleased?

A. Yes, sir. 2

Q. Just as you had done before and are doing now?

A. Yes.

Q. Since the first of January has there been any restriction upon the sale or terms of sale of licensed sanitary enameled iron ware which you purchased from licensed manufacturers? A. Not to my knowledge.

Q. Were you able to make any more out of sanitary enameled iron ware after the resale plan went into effect?

A. Yes, sir.

Q. To what was that due?

A. Well, it was due to our having less trouble and annoyances and goods coming back and bills from plumbers for labor charges, defective goods, all that cost money. 3

Q. So that the extra money that you made as compared with what you had done prior to the resale plan came into effect, was brought about by these conditions, irrespective of the price that you had to pay for the ware or at which you sold it, is that correct? A. That is correct.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hunting, who were the manufacturers with whom you did the most business in sanitary enameled ware before June 1st, 1910? 4

A. Well, I think we did business with five or six manufacturers.

Q. Will you name them?

THE WITNESS: When?

Mr. GROSVENOR: The early part of 1910.

A. The National Sanitary Manufacturing Company; the Day-Ward Company; the Cahill Iron Works, and a little

1 business with the L. Wolff Company and with the Standard.

Q. Was ninety-five per cent. of your business with those companies—I am confining my questions to the enameled ware business entirely?

A. Yes, I understand; I should say it was.

Q. Did you receive during the early part of June a series of contracts from these various manufacturers.

A. I believe we did; yes, sir.

Q. Did you receive with them a letter like this letter which is Petitioner's Exhibit No. 166, which I now show you?

A. Well, I don't remember such a letter.

2 Q. Did you sign those contracts with these companies, then, in June?

A. I would not say whether it was June or July. I would not say positively that we ever signed them all, but we signed two or three.

Q. From June, 1910, to January, 1911, did you confine your purchases to the companies with whom you had signed contracts?

A. Yes; still, I am not sure that we signed contracts with the L. Wolff Company or the Cahill Iron Works. My judgment is that we did not, but we got some goods from both

3 concerns. I am not sure that we signed contracts with those two.

Q. Do you sell goods outside of New York?

A. Yes, sir; in Vermont and Pennsylvania.

Q. In making your sales from June, 1910, to January, 1911, did you observe the prices established by this price list which is Exhibit No. 133?

A. Well, I would not say that we did. We have a large catalog and a discount sheet applying to it which covers the enameled ware and the fixtures thereon. Our prices are made to the plumbers on the fixture complete. Those prices

4 were gotten up by the sales manager in Rochester, and we make our selling price based on the cost with a reasonable profit.

Q. Did you make the price on the resale in June, 1910?

A. I couldn't say we did.

Q. Do you know whether your sales manager used this price list in making up those prices?

A. He might have used that as a basis of cost.

Q. Were you present at any meetings in 1910, of jobbers at which this resale plan was discussed?

A. I was at a meeting in Niagara Falls. Whether it was a jobber's meeting or a jobber's and manufacturer's meeting, I am not sure which. I think it was jobbers. 1

Q. Were you present when the resale was discussed?

A. No, I was there only a short time.

Q. Is not the stability of prices one of the advantages of this licensing arrangement?

A. Yes, I think it is to a certain extent.

Q. That is, all the manufacturers give you the same price?

A. Yes, on the same class of goods, from the same equal quality.

Q. Then the price list provides that all the jobbers shall sell the same class of goods at the same price, does it not? 2

Mr. NOBLE: I object to the question. The contracts speak for themselves.

THE WITNESS: I could not state what the other jobbers charge.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

MARTIN A. SISK, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows: 3

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

A. Martin A. Sisk; president of the Sterling Sanitary Manufacturing Company, Pittsburgh.

Q. Did your company sign a resale contract or contracts in June, 1910, relative to the purchase of sanitary enameled iron ware? A. We did. 4

Q. Did you sign it with more than one company?

A. Yes, sir.

Q. Did you receive a letter from the Department of Justice asking if you were forced to sign those contracts?

A. Yes, sir.

Q. Were you forced to sign them? A. No, sir.

Q. Why did you sign them?

A. Because we considered it was a benefit to the jobbing

1 interests, to the plumbing trade and to the public, in this way: Previous to the resale agreement I venture to say that the majority of our sales of enameled iron ware were seconds. Now, my experience has been in selling seconds that there is no bottom to the prices. One man may have a good run of seconds and another man a poor line of seconds. The trade in buying those goods only look at the prices irrespective of what the stock is, so I venture to say that our profit on those seconds was practically nothing. I don't think it paid us to handle them. That condition prevailed in Pittsburgh, to my knowledge, for six or eight years. Now, after the resale agree-
2 ment or schedule went into effect those seconds were eliminated from the market entirely and the result was that we were selling a better class of goods, and while there would, of necessity, be a slight advance in price, that advance was made up for by the quality of the goods, so that I think the trade generally was benefited. They were getting better goods for their money.

Q. Did you have any trouble with plumbers making claims on you for defective ware before the resale plan was put into effect? A. That was a common occurrence.

Q. What happened after the resale plan was put into
3 effect?

A. We did not have that trouble and we have not had it up to this date.

Q. What have you to say as to the quality of the guaranteed ware, or what was called Class A ware as to the time between June 1, 1910, and the previous period?

A. There is no difference in Class B ware—

Q. I mean between Class A anterior to the time of the resale plan and subsequent to it?

A. Well there was naturally a tendency on the part of the manufacturers to better their ware, for this reason: It was
4 a question with the jobber of getting the best ware he could, the prices being uniform, so the tendency on the part of all the manufacturers was to make better ware, which I believe they all did.

Q. Mr. Sisk, I would like to call your attention to the comparison between the former selling prices, that is previous to the license agreement going into effect, and subsequent thereto, on some types of ware. For example, a lavatory; have you any knowledge as to the difference in price—

Mr. GROSVENOR: Will you specify what lavatory? 1

Q. (Continuing): Between the time anterior to the resale price and during the resale period and specify the lavatory to which you refer, take for example any lavatory similar to the Standard No. 514?

A. That is a good illustration, because that is one of the very stable lavatories in the line. I would say on that particular fixture, if my memory is right, there was a slight reduction in the price.

Q. Do you remember what the difference was?

A. Well, probably five per cent., that is at least as far as our selling price was concerned. 2

Q. Your selling price to the plumber? A. Yes, sir.

Q. That is, it was five per cent. less during the resale plan, than previous? A. Yes, sir.

Q. Take the non-guaranteed tub, what was the difference in those; take the Standard tub?

A. I would judge the price on that was about the same, if anything, it was a little less.

Q. Take for example the sixth, size 18 by 30?

A. Our prices were never affected on that; if anything, we sold ours for a little less afterwards than before.

Q. Are these illustrations which I have given fairly indicative of the general line of the trade? 3

A. I would say that taking conditions all around our price was, if anything, to the plumber a little lower, for this reason: The resale schedule we always considered our minimum selling price, not necessarily our selling price, but the minimum selling price, because the margin of profit between the cost of and the resale schedule is certainly not too great. We would not want to transact all our business at that margin of profit. If we did, we would go broke.

Q. Mr. Sisk, did you make more or less money under the resale plan than you had been doing before? 4

A. Well, I think we made more money.

Q. Why?

A. For this reason: Previous to the resale plan a large percentage of our business, in fact probably the majority, was done in Class B ware, that was the general condition prevailing more particularly in Pittsburgh, I think. On Class B goods it has been an invariable rule that they are sold at an extremely low margin of profit. I do not believe any jobber

1 could say he really made any profit on them. A good piece of goods yields a fair margin. If we can do business on first-class goods we could make more money if we did less business.

BY MR. HEATH:

Q. During the time the resale plan was in existence, when you say you had less trouble by reason of defective goods, reduction of prices on that account and the return of the goods, now did that or not increase the net amount that you received on the invoice so you were enabled to reduce the prices on the invoice?

2 Q. Most assuredly. Previous to the resale schedule going into effect, as a rule, the goods we got back were Class B's. Invariably they were a dead loss to us so that previous to that time if a fixture went bad the loss consisted of the original cost plus, in a great many cases, the freight charges on the return.

BY MR. NOBLE:

Q. As to the competition, both before and after the resale plan went into effect, among the jobbers, how was that affected?

3 A. It was not affected in any way, for this reason: It was about ten per cent. of all—that is, the plumber will place his contract for the material of an entire building or two or three or ten buildings, as the case may be, so that even assuming that there is no competition on the enameled ware, by the time the competition on the other 90 per cent. of the material going into that building was considered, I would say that the conditions are not altered at all.

CROSS EXAMINATION BY MR. GROSVENOR:

Q. Mr. Sisk, you observed this price list in making your
4 sales after you signed the resale agreement, did you not?

THE WITNESS: As a limit price?
MR. GROSVENOR: As a limit price.

A. Yes.

Q. That is, you would sell higher, if you could?

A. Yes, in fact we practically never sold goods at a less margin of profit than shown on that price list.

Q. This book also covered the price at which you bought it, did it not? A. Yes.

Q. So if you wanted to increase your margin of profit you would raise your resale price? A. Exactly, yes. 1

Q. And did not all jobbers who signed the resale contract sell according to this price list?

A. I could not answer that. I don't know. I know what we done.

Q. You understand that was one of the terms of the contract that you signed, that you should observe the terms here of this price list?

Mr. NOBLE: I object to the witness testifying what the contract means. It is in writing and it speaks for itself and has been introduced in evidence by the Government. 2

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: Do you understand the question?

A. Yes, I understand the question. I would answer it this way: Even without the resale agreement we still would not sell at a less margin of profit.

Q. Is not this price list a part of the contract which you signed? A. I suppose it was, yes.

Q. You said that the enameled ware was 10 per cent. of the jobber's business? 3

A. I think more, but that much to my experience.

Q. And you said that because it was only 10 per cent. he was not much affected? A. Yes, sir.

Q. If every other article making up the other 90 per cent. was fixed by a price list the same as the 10 per cent., would not the competition be affected?

Mr. NOBLE: I object to that question. It is purely hypothetical. You do not have to answer that question, Mr. Sisk.

THE WITNESS: I could not answer it, because there is no such condition prevailing. 4

Q. With what manufacturers were you doing business before June, 1910?

A. Principally the Standard Sanitary Manufacturing Company.

Q. Ninety-five per cent. of your business was with that company? A. Oh, yes, possibly.

Q. Did you receive a letter similar to Petitioner's Exhibit

No. 166 from them in June, 1910, saying it was necessary for you to execute this contract in order to obtain sanitary enameled iron ware?

A. Well, now, my best answer to that would be this: I recall getting a letter. I cannot recall this last sentence (indicating). My best answer would be this: We received that contract very early in June, I would say about the sixth or seventh, and I held that over possibly a week before we signed it. In the meantime the Standard Sanitary Manufacturing Company was delivering goods to us. They make deliveries practically every day, so it was not fair to assume that we could not get goods unless we signed it, because goods were being delivered to us.

Q. When did you sign the contract?

A. I judge about a week after it was sent to us, about the 14th.

Q. Did you sign with anybody else? A. Yes, sir; later on.

Q. With whom?

A. The United States Sanitary Manufacturing Company; the Barnes Manufacturing Company, and the Cahill Iron Works, although we did not do any business with the latter.

Q. Did you confine your purchases from June to these manufacturers that you have named?

A. Not entirely so.

Q. I mean your business in enameled iron ware?

A. Not entirely so.

Q. Whom else did you buy from?

A. We had one instance where we bought from an outside firm.

Q. Is that the only exception? A. Yes, sir.

Q. So, with the exception of one order, you bought from the companies with whom you signed contracts? A. Yes.

Q. Will you find that Standard No. 514 in this price list, the price of which you testified was reduced by the price list?

A. This is it (indicating). There are various sizes of that fixture. The ordinary or popular size is the 18 by 24 by 10.

Q. Just read the heading.

A. (Reading): "Lavatory, Schedule 4. Page 8; plain flat back style, square or round cornered slab; full apron, 4 inch or over type; prices include concealed hanger."

Q. Which size are you referring to?

A. The principal size is the 18 by 24 by 10; that is the one ordinarily sold. 1

Q. You said there was a reduction; was that of the jobber to the plumber, or from the manufacturer to the jobber?

A. I am only speaking for myself, not for the other jobbers.

Q. When you speak of a 5 per cent. reduction, was that in the price that you make to the plumber or the price from the manufacturer to you?

A. The price that we make to the plumber.

Q. Were you at any meetings in 1910 at which this resale agreement was discussed? A. No, sir. 2

Q. Or at any meetings? A. No, sir.

Q. You were not at Toledo? A. No, sir.

Q. Or any meetings in Pittsburgh? A. No, sir.

Q. Did you have any conversation with Mr. Torrance about the matter? A. No, sir.

Q. How did you happen to come to be a witness?

A. Well, I don't know if it is necessary to answer that or not.

Mr. GROSVENOR: Will you read the question to the witness?

The last question was then read by the stenographer. 3

A. I refer that to Mr. Noble.

Mr. NOBLE: You were requested to come here and testify on behalf of the defendants, were you not?

THE WITNESS: Yes.

Mr. GROSVENOR: Now, will you read the question to the witness and ask him to answer it?

The stenographer then read the question referred to.

THE WITNESS: Well, I would say I was requested to come here by the defendants. 4

Q. Who requested you? A. I won't answer that.

Q. Were you subpœnaed? A. No, sir.

Q. Did one of the officers of the Standard Sanitary Manufacturing Company ask you to come?

A. I won't answer that.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 WILLIAM G. CALLOW, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

A. William G. Callow; president and treasurer of the Kennedy Company, Cleveland, Ohio.

Q. Did your company sign one or more of the jobbers'
2 license agreements to sell licensed sanitary enameled iron ware under licenses owned by Mr. Wayman during the year 1910? A. We did.

Q. Did you receive a letter from the Department of Justice asking if you had been forced to sign that agreement?

A. Yes, sir; I did.

Q. Were you forced to sign it? A. No, sir.

Q. Why did you sign it?

A. Because my judgment told me it was best for the business.

Q. Specify what you mean?

3 A. I mean prior to the time the resale agreements, so-called, went into effect, the grade of enameled iron ware was such that we had probably 12½ to 20 per cent. replaced. We were forced to cart the goods back and also pay plumbers' labor bills for replacing them. By the resale agreement the manufacturer would get a little better profit and a little bigger price and the probabilities were that he would improve his ware and that we would get better quality goods. Our motives were absolutely selfish.

Q. What were the results following the making of this resale agreement?

4 A. I am satisfied beyond the shadow of a doubt that we had at least 50 per cent. less goods returned under the resale than we did prior to that. That might be brought about from the fact that the people with whom we did business, their prices were alike and we bought our goods from the best manufacturer. We did not skate around to get cheaper goods, because there was only one price, but our expense for replacement was not one-half what it had been.

Q. Did you make more or less under the resale plan?

A. That is problematical, but the natural inference is

that we would make more, when we had 50 per cent. less expense and loss. 1

Q. That is irrespective of price? A. Yes, sir.

Q. What have you to say as to competition between the jobbers at the time previous to June 1, 1910, and subsequent to January 1, 1911?

A. I found no absolute price on a complete fixture, and my experience is that 90 per cent. of the enameled ware is sold as a complete fixture. That is, 98 out of 100 tubs are sold with the trimmings, and our prices were no greater after the resale agreements.

Q. The prices at which you sold this enameled ware with trimmings were the prices which you wished to put on them? 2

A. Yes, sir.

Q. So that as far as you were concerned, competition was as great as previous to that period and subsequent to?

A. I think there was no change in that particular.

Q. During the period of the resale plan did you have any trouble in purchasing seconds?

A. We never sold a second in our market. I have been in business twenty years and we never had a second come in our store.

Q. Was there anything in this agreement or in the practice of it which required you to make the plumber put a particular price on the goods to the ultimate consumer? 3

A. No, sir; he sold the goods at whatever price he saw fit.

Q. What was the result following upon the installation of this resale plan?

A. I believe it was to the advantage of the user as well as to the plumber and the jobber.

Q. Where did the advantage lie to the user?

A. When he bought a tub, for instance, he got a tub that he bought. For instance, I know concerns in this section of the country who used to buy B tubs and then they would put A labels on them and sell them as first-class tubs. Therefore, I think since they cannot do that with the resale plan the ultimate consumer was benefited by the proposition. 4

CROSS EXAMINATION BY MR. GROSVENOR:

Q. What is the name of your company?

A. The Kennedy Company, Cleveland, Ohio.

Q. Are they jobbers of plumbing supplies? A. Yes, sir.

Q. Was that company one of the defendants in the suit

1 brought by the Attorney-General of the State of Ohio to discontinue a violation of one of the laws of that State?

A. Yes, sir.

Q. Were you one of the defendants? A. Yes, sir.

Q. That was what law? A. The Valentine Law.

Q. That was a law with reference to trusts?

Mr. NOBLE: I object to his being asked if it was a law as to trusts.

Mr. GROSVENOR: I am just asking him if he was indicted in a case brought to stop a violation of the anti-trust law of that State.

2 Mr. NOBLE: I object to that unless you will produce the record and I move that the testimony be stricken out.

Q. That suit had relation to the Cuyahoga Plumbing Supply Company?

Mr. NOBLE: I object to that.

A. I had nothing at all to do with it that I know of. I had nothing to do with them then. Since then I bought them out.

Q. Whom did you buy most of your enameled ware from in
3 June, 1910, before this resale plan?

A. The United States Sanitary Manufacturing Company; the McCrum-Howell Company; the Standard Sanitary Manufacturing Company; the Barnes Manufacturing Company; and a number of others in small quantities.

Q. Did you buy 95 per cent. of your enameled ware from those companies? A. I would not say so.

Q. Ninety per cent.? A. I would not say so.

Q. How much?

A. I would say 80 per cent., but that would only be an opinion.

4 Q. You bought by far the larger part from them?

A. Yes, sir.

Q. Did you receive letters and contracts from them in the early part of June, from each of them?

A. We received the contracts.

Q. Did you receive a letter such as this (indicating)?

A. I would not recall it. I was in sympathy with the resale plan and I just signed the agreements.

Q. And did you confine your purchases in the latter part of 1910 to the companies with whom you signed contracts?

A. Yes, sir; with one exception, I think.

Q. With the exception of one purchase, you mean? 1

A. Yes, sir; and that was a company to whom we owed money and we bought from them to balance the account.

Q. Did you observe this price list in making your sales to plumbers?

A. When we got that schedule I handed it to one of the office men and I asked him to make up a price on naked lavatories in keeping with that book when it was sold as an item alone.

Q. You observed it, then?

A. When it was sold as an item alone, but 90 or 95 per cent. 2 are sold complete.

Q. With fixtures? A. Yes, sir.

Q. Did you build them separately?

A. As a rule we build the fixture as a fixture.

Q. Had that been your practice previous to signing the contract, or did you put in lump amounts?

A. Sometimes we did it one way and sometimes another way. There was no well defined policy, as far as I know of, as to that.

Q. Do you sell outside of the State of Ohio? A. Yes, sir.

Q. In what states?

A. Oh, within 150 or 200 miles of Cleveland. We get into 3 New York and Pennsylvania.

Q. Were you at the meeting in Toledo?

A. I was at Toledo, but not at the meeting.

Q. You did not hear anything said on the subject?

A. I was not at the meeting.

Q. Did you have any conferences or discussions with manufacturers at that time with reference to this resale plan?

A. I did not.

Q. Were you at the Niagara Falls meeting?

A. Yes, sir; I was.

Q. What was that called for? 4

A. To organize a jobbers' organization; there was a discussion of about five minutes at the outside relative to a resale arrangement, but I don't think it resulted in any recommendations or suggestions. To the best of my recollection there was no recommendation even given to anybody regarding the resale proposition.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: On behalf of the Barnes Manufacturing Company and the defendants, T. R. Barnes and W. C. Winfield; on behalf of the National Sanitary Manufacturing Company and Frank G. Borden and D. W. Davis; and the Union Sanitary Manufacturing Company and L. C. Huesmann and E. V. Brigham, I desire to say that in view of the statements and warnings given by counsel for the Government to the other witnesses when they were upon the stand in Philadelphia—

Mr. GROSVENOR: Witness defendants, please.

Mr. NOBLE: Don't interrupt my statement—in Philadelphia and Pittsburgh relative to the position in which they would place themselves and in which they did place themselves by going upon the witness stand to testify concerning the issues in this suit, which it was stated by counsel for the Government, as to the matters, transactions and things here alleged and as to which some evidence has been given, were the same or substantially the same as the matters, transactions and things laid in the indictments found in Detroit, on or about December 7, 1910, and in view of the pendency of the criminal proceedings covered by those indictments, these witnesses are unable at this time, on their own behalf and on behalf of the corporations with which they are connected, to fully and freely present their defense to the cause of action alleged in the Petition in this case and covered by the proofs thus far adduced; and I desire to protest that this situation is one brought about by the action of the Government itself which denies them, in effect, their day in court, in which they might properly and fully defend themselves and their property in this matter; and, that upon the advice of their respective personal counsel they will not at this time undertake to testify.

Mr. GROSVENOR: Counsel for the Government objects to this statement as being in any way evidence of the facts contained therein. The proper way to prove unwillingness to testify, of course, is to put the witness on the stand and have him claim his rights, which cannot be done by counsel in the absence of the witness. For this reason counsel for the Government objects to the statement and does not wish to be bound

by any of the allegations of facts therein contained. 1

Mr. J. R. CAREY: I wish to note my appearance as counsel for the National Sanitary Manufacturing Company, Frank G. Borden and G. W. Davis. I wish to state that the situation is this:

These defendants have declined to voluntarily appear here to testify; that they will be present at the final hearing of the case or on any occasion when they are required by due process to appear, but that they will not voluntarily testify at this time.

Mr. NOBLE: I am very happy to add that to my statement so as to cover all the persons about whom 2 I spoke.

At this point the taking of evidence was adjourned until the following morning, at 11 o'clock, at the Federal Building, in New York City.

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4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, N. Y., Post Office Bldg.,

April 20, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the Defendants was resumed this 20th day of April, in New York City, at the Post Office Building, at 11 o'clock A. M., before C. John Beeuwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., *et al.*

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled by Mr. Noble, testified as follows:

EXAMINATION BY MR. NOBLE:

Q. Mr. Wayman, have you been a witness heretofore in this case? A. Yes, sir.

Q. By whom were you called? A. By the Government.

Q. Were you subpœnaed? A. Yes, sir.

4 Q. Under what date were you subpœnaed?

A. October 31, 1910.

Q. Have you a copy of the subpœna that was served upon you? A. Yes, sir.

Q. And was it pursuant to this subpœna that you appeared and testified? A. It was.

MR. NOBLE: I would like to have this subpœna (indicating) marked and filed as Exhibit for Identification offered by the defendants, No. 24.

Subpœna referred to was then marked and filed as "Defendant's Exhibit for Identification No. 24." 1

Q. On what day were you subpœnaed?

A. October 31st, 1910.

Q. And did you testify on that day and succeeding days?

A. Yes, sir.

Q. In response to questions addressed to you by the Government? A. Yes, sir.

Q. Where was that? A. In Pittsburgh.

Q. Did you later testify elsewhere?

A. Yes, in Chicago and New York City.

Q. On those occasions were you examined by the Government? A. Yes, sir. 2

Q. Pursuant to this same subpœna? A. Yes, sir.

Q. Did you produce in compliance with the subpœna several documents which you were required to produce thereby?

A. Yes.

Q. And were they or some of them put in evidence by the Government? A. Yes.

Q. Who served the subpœna upon you?

A. A United States Marshal.

Q. Where? A. At my office, in Pittsburgh.

Q. Mr. Wayman, what is your business? 3

A. I am engaged in the sanitary enameled iron ware industry; I might say formerly as a manufacturer and now as the owner of the several patents enumerated in the license agreements; and engaged in the promotion of the use of those patents, in accordance with the license agreements.

Q. When did you begin the promotion or the exploitation of your interest or ownership in those patents?

A. Originally in the early part of 1908.

A. Well, I referred to the time after you got an option upon them. When did you get your options upon those patents? Please state the dates? 4

A. I got the option on the application for the Dithridge patent about December 15, 1909; an option on the Arrott patent, December 28, 1909, and an option on the Lindsay patent early in January, 1910.

Q. When did you begin the promotion of those patents, of your ownership or interest in them?

A. It was early in the year 1908.

Q. I don't think you have understood my question: when

1 did you begin to exploit your interest, your option, your ownership in the patents to which you have referred?

A. In August, 1909.

Mr. NOBLE: Will you please read that question to the witness? Pay attention to the question.

The stenographer then read the last question.

Mr. NOBLE: Scratch the question out. I will read it in another way.

Mr. GROSVENOR: No, leave it as it is.

Mr. NOBLE: Very well.

THE WITNESS: I don't believe I understand it.

2

BY Mr. NOBLE:

Q. When did you get your option on the Arrott patent?

A. December 28, 1909.

Q. What did you do immediately after you got that option?

THE WITNESS: In what respect?

Mr. NOBLE: In respect to the Arrott patent?

A. Why, I saw the Wolff Company with reference to the Lindsay patent that they had.

Q. And did you get an option from them? A. I did.

3 Q. And you had previous to this time, about the middle of December, gotten an option on the Ditheridge patent?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, having obtained those options, what did you next do?

THE WITNESS: I don't believe I understand your question. In what respect?

Mr. NOBLE: What did you do toward exploiting their use?

4 A. I visited and wrote to the various manufacturers with reference to entering into a license agreement with me under those patents.

Q. Do you recall the date that you began writing or visiting those manufacturers after having obtained the option on the Arrott patent?

A. Why, it was immediately thereafter, the 30th and 31st, I believe.

Q. Of December? A. Yes, 1909.

Q. Now, the patents that you have referred to, do you re- 1
call their numbers?

A. The Arrott patent is 633,941; the Ditheridge is 949,625 and the Lindsay is 939,918.

Q. Now, going back, Mr. Wayman, when did you first begin to attempt to get an interest in the Arrott patent?

THE WITNESS: Are you speaking of previous to the time that I came to Pittsburgh, or thereafter?

MR. NOBLE: The earliest time at which you began?

A. It was early in 1908.

Q. When did you first learn of the existence of the Arrott 2
patent?

A. It was early in 1907 when I was with the Seamless Steel Bathtub Company.

Q. How that did come about?

A. Through a notice that we received from the Standard Sanitary Manufacturing Company, stating that we were infringing on the Arrott patent, which they said was owned by them, and notifying us to discontinue it.

Q. Did they say anything about it having been sustained by the Courts? A. Yes, sir.

Q. What did they say?

3

A. They said it had been sustained against the J. L. Mott Iron Works.

Q. Did you take counsel as to whether the devices that you were using in the Seamless Steel Bathtub Company were an infringement of the Arrott patent? A. Yes sir.

Q. What were you advised?

A. That it was an infringement, and that the Standard Sanitary Manufacturing Company could undoubtedly secure an injunction against us.

Q. Now, in your bnsiness, as a manufacturer of bath tubs at that time, to which you refer, how valuable was the inven- 4
tion covered by the Arrott patent and what would have been the effect if you would have been obliged to discontinue its use?

A. Well, I considered it so necessary in our business that we could not have operated our factory without its use, and we were very much worried about it at the time. In fact, after I took it up with our attorneys, our superintendent tried to find some means to get around it, but he could not get up any device and there were no other devices known at

1 the time. We tried to enamel by hand—in fact I tried it myself, to find out what the difference was between the hand process and the automatic process. The hand process as applied to our bath tubs there, was simply out of the question. We could not get over the metal fast enough to make the tub smooth, and in fact the tub would cool, so that the enamel would not be fused on before it went into the furnace. In fact, the tubs were white —I mean that the enamel would roll down into the bottom of the tub, because the tub cooled so quickly. It was impossible to make a salable bath tub with the hand process.

2 By Mr. Grosvenor:

Q. That is, with the seamless company?

A. I am speaking of the Seamless Steel Bathtub Company.

By Mr. Noble:

Q. What did you do to try to get a license under the Arrott patent? I mean the Seamless Steel Bathtub Company?

A. I wrote the Standard Sanitary Manufacturing Company with regard to securing a license, and I think in reply
3 to that they stated they were not going to license anybody.

Q. When was that, do you recall?

A. Some time in 1907.

Q. Did you have any further negotiations with the Standard Sanitary Manufacturing Company relative to procuring a license under the Arrott patent? A. Yes.

Q. Will you state what those negotiations were?

A. I had spoken to Mr. Day, of the Day-Ward Company about the matter, and in fact I was considerably agitated about it, and I called attention to the fact that although the business could be considerably improved—that is the Sani-
4 tary Enameled Ware business in general—

Q. (Interrupting): What I am talking about now is your negotiations to secure a license for the Seamless Steel Bathtub Company.

The Witness: Well, that led up to it.

Mr. Noble: Oh, I did not mean to interrupt you. I thought you had not understood my question. Go ahead.

A. (Continuing): If the Standard Sanitary Manufactur-

ing Company would license all the manufacturers under the Arrott patent; and Mr. Day and I had several talks about the matter. At a meeting of the Central Supply Association in Chicago, in February, 1908, there were several manufacturers present. I talked with Mr. Day about calling the manufacturers that were there together and going over the matter of getting a license from the Standard Sanitary Manufacturing Company. I called his attention to the licenses that were in existence in the electrical business, and how the electrical industry, in which I had been engaged formerly, was conducted on that basis. The result of that talk was that I stated that I for one was willing to have the Standard Sanitary Manufacturing Company grant us a license--

Q. You mean grant the Seamless Steel Bathtub Company?

A. Yes, the Seamless Steel Bathtub Company a license, and even provide the selling prices at which we should dispose of our goods.

Q. You mean you were so anxious to get the use of the Arrott patent?

A. Yes, yes. I was almost willing to get it on any terms. Several of the manufacturers thought that in taking a license direct from the Standard Sanitary Manufacturing Company it would not be advantageous to them for the reason that their books would be open to their inspection, and accordingly we talked over the matter between several of us of raising enough money and buying this patent and turning it over to a holding company, which in turn would license all the companies to use it. As a result of that talk Mr. Day, of the Day-Ward Company, and Mr. Barnes, of the Barnes Manufacturing Company, and myself, went to Trenton, New Jersey, to look into the organization of the Potteries Selling Company. That was early in March, 1908, a few days after the meeting that I spoke of, in Chicago.

Q. Now, may I interrupt your story long enough to fix the date exactly and show you certain letters. I show you a letter dated March 2, 1908, from George E. Day to you; a telegram dated March 3rd, from Warren, Ohio, addressed to you and signed by George E. Day; a telegram dated March 4, without the year, addressed to the Seamless Steel Bathtub Company, Detroit, and signed "The Day-Ward Company," and a letter from the Day-Ward Company addressed to the Seamless Steel Bathtub Company, dated March 4th, 1908,

and I ask you to look at those documents and state what they are.

A. The letter of March 2nd, signed by Mr. George E. Day, is to me.

Q. Did you receive that letter? A. Yes, sir.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 14.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 14."

Mr. NOBLE: Defendant's Exhibit No. 14 reads:

"THE DAY-WARD COMPANY,
"Warren, Ohio, U. S. A., March 2nd, 1908.

"Mr. E. L. Wayman,
"c/o Seamless Steel Bathtub Co.,
"Detroit, Mich.

"Dear sir:—

"The writer has decided to leave tomorrow night for 'the East, as he has some matters to look after in New "York for a day, and will meet yourself and Mr. Barnes "in Trenton on Thursday morning at Mr. Mattlack's "office about ten o'clock.

"Yours respectfully,

"D/F "Geo. E. Day."

Q. Who is the Mr. Barnes there referred to?

A. Mr. T. R. Barnes, secretary of the Barnes Manufacturing Company, of Mansfield, Ohio.

Q. Is the George E. Day, by whom that letter is signed, the George E. Day who is secretary and treasurer of the Day-Ward Company? A. Yes, sir.

Q. And who is Mr. Mattlack?

A. He is general manager of the Trenton Potteries Company, I believe the correct name is, at Trenton, N. J.

Q. What is that telegram (indicating)?

A. This is a telegram to me dated March 3rd, from Mr. George E. Day.

Q. Did you receive that telegram? A. Yes, sir.

Mr. NOBLE: I offer that in evidence as "Defendant's Exhibit No. 15."

Telegram referred to was then marked and filed as

"Defendant's Exhibit No. 15." 1

Mr. NOBLE: This telegram reads:

"Warren, O., Mar 3-08

"E. L. Wayman,
"Care Seamless Steel Bathtub Co,
"Detroit, Mich.

"Mattlack wires cannot meet us until Friday morn-
"ing. Expecting letter will wire more definitely to-
"morrow.

"George E. Day."

Q. You received this letter (indicating)? A. Yes, sir. 2
Q. What is this letter?
A. A letter of March 4th, 1908, confirming the telegram.
Q. You received that letter, did you? A. Yes, sir.

Mr. NOBLE: I offer that as Defendant's Exhibit No. 16.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 16."

Mr. NOBLE: This reads as follows:

"THE DAY-WARD COMPANY,
"Warren, Ohio, U. S. A., March 4th, 1908. 3

"Seamless Steel Bathtub Co.,
"Detroit, Mich.

"Gentlemen:

"We confirm our telegram to you of even date as fol-
"lows: 'Advise Mr. Wayman to meet Mr. Day in Tren-
"ton Friday.' Would say Mr. Wayman called us up
"by telephone from Pittsburg a short time ago and ad-
"vised us that he would meet Mr. Day at Trenton on
"Friday.

"Yours truly, 4
"The Day-Ward Co.,
"W/F "Per A. G. Ward."

Q. I now show you a telegram and ask if that is the same matter as the letter I just read? A. Yes.

Mr. NOBLE: I offer that in evidence as Defendant's Exhibit No. 17.

The telegram referred to was then marked and filed as "Defendant's Exhibit No. 17."

1 BY Mr. NOBLE:

Q. Do those exhibits fix the date of the visit which you made to Trenton with Mr. Day and Mr. Barnes? A. Yes, sir.

Q. Now, go on with what you were saying about your visit there and your efforts to acquire this patent for the Seamless Steel Bathtub Company?

A. Mr. Day and Mr. Barnes and myself met Mr. Mattlack and went over the subject-matter of his organization. Some time a little later Mr. Day and Mr. Barnes and myself met in Cleveland, where we went over in a rough way the terms of a license agreement.

2 BY Mr. GROSVENOR:

Q. When was this? A. Shortly after that, in 1908.

Mr. GROSVENOR: Thank you.

THE WITNESS (continuing): I had with me a number of electrical licenses, and the rough form that we outlined was patterned after those licence agreements.

Q. I now show you the carbon copy of a letter dated March 11, 1908, and addressed to Mr. G. E. Day, Warren, Ohio, unsigned, but in the left-hand corner of the second page showing 3 the words "E. L. Wayman/J.W." and ask you what that document is?

A. That is a copy of a letter which I wrote to Mr. Day on March 11th.

Q. Did you mail the original of that to him?

A. Yes, sir, it went out of the office, and that is the carbon copy.

Q. Did you ever talk with him about it afterwards?

A. Yes.

Q. And he said he received the letter?

A. I don't remember him saying he received the letter, 4 but—

Q. Did he talk to you about the subject-matter of the letter? A. Oh, yes; yes.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 18.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 18."

Mr. NOBLE: Before reading this letter on the Record, I wish to state that I am informed that the Day-Ward

Company, with which Mr. Day was formerly connected, is thinking of substituting other counsel of record, in this case. I have not received that information directly from them, but I am so informed. The letter which I am offering, therefore, I will withhold if counsel for the Government desires that they shall be present when this testimony is being taken, but this is a part of my case and I am ready to proceed. 1

Mr. GROSVENOR: Counsel for the Government is counsel for the Government, and not for any of the defendants, Mr. Noble being counsel for the Company to whom he refers on the Record.

Mr. NOBLE: The source of my information comes indirectly from counsel for the Government as to the proposed change of counsel. 2

Mr. GROSVENOR: I understand that the Day-Ward Company are arranging to have a substitution of counsel, but of course until this is done their counsel of Record has full authority in the premises.

Mr. NOBLE: The letter dated March 11th, just referred to, and which is offered in evidence as Defendant's Exhibit No. 18, reads as follows:

"Mar. 11, 1908. 3

"Mr. G. E. Day,
"WARREN, OHIO.

"Dear Sir:—

"I enclose you agency agreement which is in the "form of agreement used between the lamp manufac- "turer and the jobber who acts as agent for their par- "ticular brand of lamps. There are some very good "points in this which I have marked, and which could "be used in a contract between the selling company "and the jobber." The selling company which you mentioned there was the selling company which you said you and several manufacturers thought of forming—putting up money for forming to purchase the Arrott patent? A. Yes. 4

Q. Which selling company you had in mind at that time might grant licenses to manufacturers of sanitary enameled iron ware, is that correct? A. Yes, sir.

Q. (Reading): "You will note that it states very specific-

"ally that the jobber loses his rebate in case he does not live
"up to the contract. The incandescent lamp manufacturers
"had in their agreement the following:

"'This Company is licensed to use chemical exhaust
"'process of obtaining a vacuum in lamps.
"'This process is essential to the production of a lamp
"'of the highest quality licensed in patent
"'numbers.'

"The reproduction of the license label also appears
"on the letter-head. If this arrangement goes through.
"I think it would be well to have all of the manufac-
"turers put on their letter-heads something to the fol-
"lowing effect." When you say, "all the manufactu-
rers" you mean all the manufacturers to whom you
might grant licenses?

A. Yes.

Q. (Reading): "'This Company is licensed to use the
"'automatic dredge process of applying porcelain to enam-
"'eled ware. This process is essential to the production of
"'enamel ware of the highest quality, Licensed under pat-
"'ent

"I am leaving this afternoon for New York and
"will be at the Manhattan Hotel until Saturday after-
"noon.

"Trusting that this information will be of value to
"you, I am,

"Yours very truly,

"E. L. Wayman,
"Assistant Manager."

BY MR. NOBLE:

Q. Now, was Mr. Day one of the men that you were thinking of associating with you in purchasing the Arrott patent at that time? A. Yes, sir.

Q. Now, did anything come of your efforts at that time to purchase the Arrott patent? A. No.

Q. Will you state why not?

A. Mr. Day took the matter up with the Standard Company, but was not able to accomplish anything. They stated that they did not believe that they cared to dispose of the patent or enter into such close relations with their competitors.

Q. So that the result of your efforts was that you failed to purchase the patent at that time? A. Yes, sir. 1

Q. You said that you applied for a license for the Seamless Steel Bathtub Company under the Arrott patent; that the Standard declined to give you one. Did you thereafter get a license from them? A. No, sir.

Q. Did they agree to give you one? A. Yes, sir.

Q. Why didn't you take it?

A. We wrote them to send us the papers, but they never came.

Q. Why didn't you follow it up?

A. Inasmuch as our company at that time had practically discontinued doing business, I never followed it up. 2

Q. Did the Seamless Steel Bathtub Company ever commence doing business again? A. No, sir.

Q. Did you make any efforts to reorganize it?

A. Yes, sir.

Q. Between what periods?

A. From the early part of 1908 until about the 1st of August, 1909.

Q. Were your efforts successful? A. No, they were not.

Q. Now, you spoke of your connection with the electrical industry and of certain license agreements in that industry. What electrical industry were you connected with? 3

A. I was connected with the Western Electric Company of Chicago.

Q. Will you please state in what capacities?

A. I went to work for the Western Electric Company in 1895, first in the position of bill clerk; then in the stock rooms; then in the sales department in Chicago. From there I went in the capacity of salesman to Detroit. That was in the latter part of 1901. I opened up an office in Detroit for the Company and continued to sell and introduce their apparatus and supplies throughout that territory. 4

Q. Were you associated there in any way with Mr. Eugene H. Sloman?

A. Yes, sir; Mr. Sloman and I had an office together.

Q. That was in 1901?

A. That was early—it was shortly after I came to Detroit, yes.

Q. And for how long a period did you and he share offices? A. For something over a year.

Q. Did your intimacy with him continue?

A. Yes, while I was associated with Mr. Sloman that was where I first became interested in the seamless steel bath tubs. Mr. Sloman, at the time I met him, was trying to succeed in drawing a bath tub out of a single sheet of steel. He was making experiments, but he was hindered by his finances. We became very well acquainted, and I later sold him a motor on long time, with which he was experimenting and using in this effort to draw a bath tub from a single piece of steel. Later my company sent me to San Francisco as sales manager—

Q. (Interrupting): When was that, do you recall?

A. Early in 1903.

Q. How long did you stay in San Francisco?

A. I was in San Francisco from the early part of 1903 until some time in October, 1906.

Q. Now, tell us the various positions you occupied there and generally about the business you did?

A. I went there as sales manager of the supply department. We had quite a small business at that time—in fact I think it amounted to about twenty or twenty-five thousand dollars a month. The opportunities out there at that time were very good. It was an excellent field for electrical apparatus and material. The high tension lines were just opening up, and there was quite an extensive work being done all along the Coast. The business that we were principally engaged in was electrical supplies and apparatus. These electrical supplies were mostly sold under contracts in the shape of license agreements, covering sockets, cut-outs, arc lamps, fan motors and switches.

Q. And those were license agreements under patents?

A. Yes.

Q. What positions did you hold there?

A. From sales manager I was promoted to assistant manager, and then later I was made manager of the company.

Q. And for how long were you manager of the company at San Francisco?

A. I think it was from May until I left there in October. I was promoted to the position of manager about six months before I left the employ of the company.

Q. Were you there at the time of the earthquake?

A. Yes.

Q. In what position?

A. I was assistant manager of the company at the time.

Q. When did the earthquake occur? 1

A. It was April 18th, 1906.

Q. What effect, if any, did that have upon the company's business there? Just describe fully what you did in connection with the earthquake in respect to the business in which you were then engaged?

Mr. GROSVENOR: Counsel for the Government respectfully suggests that this history of earthquakes and the electrical business is not relevant to the combination under discussion, and therefore objects, on the ground that it is immaterial and irrelevant, to this whole line of questioning. 2

Mr. NOBLE: Go on, Mr. Wayman.

A. The morning of the earthquake some of the other employees and myself were fortunate enough to get down there in time to thoroughly police the building and get out the fire hose, and through pretty hard efforts and good luck we managed to save the company's place. I presume the merchandise and what we had on hand amounted to about one million dollars. The fact that we saved the building and that all the other electrical houses were practically destroyed naturally brought us a great amount of business. Our business doubled right away. I remember that from doing a supply business of about $50,000 a month at that time, our supply business and electrical business during the month that I left there amounted to over one hundred thousand dollars a month. The telephone business ran up too on a basis of between five and six million dollars a year. Our total business was over $7,000,000 that year. 3

Q. When you first went there, what was the total volume of business? A. Between $250,000 and $300,000 a year.

Q. And under your management it was built up to how much? 4

A. In the supply business to over a million dollars a year, and the telephone end, of which I was assistant manager, the total business ran up to about $7,000,000.

Q. Were there any other buildings saved in the same locality as your building?

A. No, there were not. I think outside of our building the only buildings in the downtown district that were saved were the Post Office and the Mint.

Q. The rest of them were destroyed by the fire?

A. Yes, sir.

Q. Now, when you were in Detroit in 1901 you said that Mr. Sloman showed you some work that he was doing in respect to manufacturing bath tubs out of a single sheet of steel? A. Yes.

Q. Did you participate in any of the experiments that he was carrying on?

A. Well, in a small way. I was very much interested in the proposition because of the advantages over iron that were apparent and that were very prominent. The fact that a five-foot tub drawn out of a sheet of steel would weigh approxi-
2 mately one hundred pounds less than that of iron was quite a point in the saving of freight.

Q. Were the manufacturers of cast iron enameled tubs having any difficulties at that time that you know of?

A. Yes, there were considerable difficulties. I was given to understand that the iron companies lost a great deal of their product through the fact of improper manufacturing methods and also defects due to impurities in the iron, etc. The fact that steel was more or less of a pure metal, Mr. Sloman argued, it would enamel much more easily than cast iron.

3 Q. When you first went to San Francisco, how many employees were there in the business?

A. Oh, I presume we had about fifty.

Q. And when you left there three years and something later? A. There were between four and five hundred.

Q. Were these license agreements under patents to which you referred used by the Western Electric Company?

A. Yes, sir.

Q. Were their terms as broad and comprehensive as the terms which you later embodied in the license agreement similar to Exhibits 9 and 11 offered by the Government?

4 Mr. GROSVENOR: Counsel for the Government objects to this entire line of questioning as immaterial and incompetent. What the agreements of the electrical companies may or may not have been is absolutely immaterial in this case. Furthermore, these agreements are now in question in the Court, and it seems utterly immaterial to refer from one question to another question of law.

Mr. NOBLE: What was I saying when counsel interrupted me with his stump speech? 1

The stenographer then read the last question.

A. Yes, sir.

Q. Were you familiar with those terms and the operation under them? A. Yes, sir.

Q. Had you been selling goods in accordance with them for many years? A. Yes.

Q. And during your work as assistant manager and manager of the San Francisco house, had you had salesmen under you using them? A. Yes, sir.

Q. And was it a part of your duty to refer to them frequently? A. Yes, sir. 2

Q. Had you ever heard anybody question their legality at any time or any place? A. No, sir.

Q. Either under the Federal or State laws? A. No, sir.

Q. Now, where did you go when you severed your connection with the Western Electric Company in San Francisco in October, 1906?

A. I went with the Seamless Steel Bathtub Company in Detroit, Michigan, in the capacity of sales manager.

Q. Who asked you to come there? A. Mr. Sloman.

Q. Now, will you please describe what business that company was engaged in? 3

A. The Seamless Steel Bathtub Company, manufactured a bath tub that was drawn out of a single sheet of steel and then enameled. This tub, compared to the cast iron tub, weighed about 115 lbs. less, but was similar in appearance and design. When I first went there they were not quite ready for operation, and I tried to close up some negotiations in Canada that Mr. Sloman had started for the building of a Canadian plant to operate under a license from us at so much per tub.

Q. The license which you refer to, in Canada, was a license agreement? A. Yes. 4

Q. Under patent?

A. Yes, under patents that were owned by the Seamless Steel Bathtub Company. There was a patent on the tub itself and some process and application patents.

Q. Those patents covered the shell itself, as well as the methods of making it? A. Yes.

1 Q. Now, did the company thereafter start into the manufacture of these tubs?

THE WITNESS: You refer to the company in Detroit?

Mr. NOBLE: Yes, the Seamless Steel Bathtub Company.

A. Yes, shortly after that we put them on the market, early in 1907. I visited several jobbers, and knowing the conditions of the business after inquiring into it, I attempted to license jobbers under a license agreement for the sale of
2 seamless steel bath tubs.

Q. Under the patents which the company owned?

A. Yes, sir.

Q. Did you issue any licenses to jobbers?

A. I issued licenses to several.

Q. I show you a paper upon the letter-head of the Seamless Steel Bathtub Company, Detroit, Michigan, addressed to the Republic Manufacturing Company, Chicago, Ill., and signed by you as manager, with the words "accepted, Repub-"lic Mfg. Co., W. A. Ratcliffe, Prest."

A. That is a license agreement concerning the sale of
3 seamless steel bath tubs by the Republic Manufacturing Company to plumbers.

Mr. NOBLE: I offer that as Defendant's Exhibit No. 19.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 19."

Mr. NOBLE: This letter reads as follows:

"SEAMLESS STEEL BATHTUB COMPANY,
Union Trust Building,
Detroit, Mich.

March 6, 1907.

4

Republic Mfg. Co.,
Chicago, Ill.
Gentlemen:—

CLAUSE (1). It is agreed that you will purchase from us 2000 assorted bath tubs; this entire quantity to be taken by you by March 31st, 1908.

CLAUSE (2). As this company is the owner of cer-

tain letters patent under which this product is manufactured, and is, therefore, interested in maintaining the value of these patents, it is agreed that you will maintain the selling prices issued by this company, as set forth in the sheet dated March 1st, copy of which is attached herewith, and is to be considered as part of this agreement, or such resale prices as may be established by the jobbers in the city of Chicago. 1

It is understood that the prices mentioned in this agreement and in the price sheet attached, cover only the value of the product as furnished by us, and that no extra parts are to be furnished by you to your customers without making an extra charge for such additional equipment. In event of it being necessary to advance resale prices, you agree to adopt such advanced schedule of selling prices immediately upon notice from us that advanced resale prices become effective. Within five days of our request in writing, you agree to advise us definitely whether you have or have not sold or offered to sell any product purchased in this agreement at lower prices or more favorable conditions of sale than those established in the city of Chicago. 2

3

CLAUSE (3). In consideration of this agreement being faithfully performed by you, we agree to invoice the product ordered in Clause one at a discount of 5%, to be deducted from the lowest quantity price as shown in net price list to Jobbers attached, or any Jobbers prices we may issue, except that when ordered in less than carload lots, the extra charge for less than carload lots is to be paid by you, less 5%.

CLAUSE (4). It is agreed that we will not quote any other Jobber in the City of Chicago any better prices than our regular Jobber's prices. It is agreed that we will furnish you free of charge, such printed matter as we may issue from time to time, that may be necessary for the proper publicity of our product, and that all inquiries received from the City of Chicago, other than those from Jobbers will be referred to you for attention. 4

CLAUSE (5). Any violation by you of the terms

of this agreement enables us to terminate this contract immediately upon notice in writing to that effect.

CLAUSE (6). The spirit of this contract is in the nature of a continual agreement, but may be cancelled by either party at the end of three months written notice.

Yours truly,
SEAMLESS STEEL BATHTUB COMPANY,
E. WAYMAN,
Asst. Mgr.

Accepted:—
Republic Mfg. Co.
W. A. Ratcliffe, Prest.

Q. Now, did that company, the Seamless Steel Bathtub Company, proceed to manufacture seamless steel bathtubs?

A. Yes, sir.

Q. And did they put them upon the market and go into the business generally?

A. Yes, sir; we shipped them all over the United States and some foreign shipments were made.

Q. You said that company went out of business, why?

A. Well, because of an insufficiency of capital, together with the panic in 1907, which made it impossible for us to continue.

Q. And did not the financial backer of the concern die?

A. Yes, sir.

Q. Who was he? A. Mr. Theodore Buhl.

Q. I show you now a paper consisting of three typewritten sheets and ask you what that document is?

A. This is a license agreement covering the sale of steel shells to the other manufacturers under patents—

Q. Other manufacturers of what?

A. Of sanitary enameled ware, under patents owned by the Seamless Steel Bathtub Company.

Q. Who prepared that instrument? A. I did.

Mr. NOBLE: I offer this in evidence, calling attention to the fact that there are various interlineations in ink and pencil which I will later ask questions about.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 20."

Mr. NOBLE: Mr. stenographer, please make an exact copy of this instrument.

Defendant's Exhibit No. 20 reads as follows: 1

THIS AGREEMENT, made in duplicate this day by and between the Seamless Steel Bathtub Co., a corporation organized and existing under the laws of the State of Michigan (hereinafter called the "Licensor"), party of the first part, and

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH: 2

THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive license to make and sell Seamless Steel Bathtubs under the following United States Letters Patent, to wit: upon terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's 3

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained a non-exclusive license to practice in the manufacture of Seamless Steel Bathtubs, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines. 4

1 The Licensee shall pay the following royalties for license herein granted, to wit: xxx/2% of the net selling prices as established by the Licensor, the net amount of royalties with all rebates deducted, as hereinafter provided for, not to be less than twenty-five thousand (25,000) dollars for the first year, and not less than forty thousand (40,000) dollars per annum for each succeeding year during the life of this contract.

2 The Licensee shall on or before the 20th day of July, October, January and April, of each year succeeding the term of this contract render to the Licensor a sworn statement in writing showing the number and description of goods made hereunder, sold and invoiced by the Licensee during the quarter then last past, and shall pay the royalties as above provided for each quarter on or before the 30th day of each of said months in each year. The books of account of the Licensee shall be open to inspection at all reasonable times, of an accountant appointed by the Licensor, for the purpose of verifying the statements rendered under this agreement.

3 All terms, conditions, regulations and prices covered by this agreement now established by the Licensor and set forth in Schedules attached to and made part hereof shall be in force and effect until other terms, conditions, regulations or prices are substituted therefor by the Licensor, which substitution it is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time.

4 If at the end of the third quarter of the first year (said year beginning) it shall appear that the Licensee has during the first quarter complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder with the following rebates from the royalties paid for said license for said first quarter's sales, to wit, 2-½% of the net selling prices (as established by the Licensor), at which the goods were sold.

At the termination of each succeeding quarter of the

said license, if it shall appear that that Licensee has fully complied with all the terms of this agreement during the second succeeding quarter, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensor for sales made during the second preceding quarter. 1

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any quarter the Licensor may withhold any and all unpaid rebates, and declare the same forfeited as penalty for said violation and shall at once notify the Licensee to that effect. 2

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to customers of any other Licensee under a similar license.

The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents, or any of them. 3

The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 4

No goods manufactured under this License shall

1 be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

The Licensor shall give the Licensee the benefit of all further patents it may secure pertaining to, or such improvements as it may make in the manufacture of Seamless Steel Bathtubs, without additional cost to the Licensee. The Licensee shall give the Licensor the same privileges without cost, should they come 2 into possession, or have knowledge of, all further patents and improvements in the manufacture of Seamless Steel Bathtubs.

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the 3 Licensee, for a further term of five years on conditions not less favorable than herein expressed.

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

4 .....

.....

BY MR. NOBLE:

Q. Did you attempt to get manufacturers of sanitary enameled iron ware to accept licenses similar to the one here expressed on this paper?

A. Yes, sir, I saw several of the manufacturers.

Q. You had conferences with a number of them?

A. Yes, sir.

Q. Did you succeed in interesting them in the matter? 1

A. I succeeded in interesting two of them. I saw the United States Sanitary Manufacturing Company, the J. L. Mott Iron Works, the L. Wolff Manufacturing Company, the Humphryes Manufacturing Company, and A. Weiskittel & Son Company. The Humphryes Manufacturing Company offered to make a contract with me—that is, with the Company—for ten years for the purchase and sale of the completed article made under our patents. The Mott Company was interested in it only from an export standpoint, but inasmuch as I was not able to interest all the manufacturers so that I could count on a substantial output, I dropped the 2 matter. Nothing ever came of it.

Q. Now, upon exhibit 20, which was the license agreement you just referred to, I notice that there are numerous ink interlineations. Some words are scratched out and some words are written in pencil and some paragraphs scratched out. Will you please tell me how those marks and interlineations came there?

A. Well, I used that paper as a basis for making up the present license agreement, that is the preliminary rough forms.

Q. You refer to the license agreement which you granted 3 to the various manufacturers under the Arrott patent?

A. Yes, sir, not the final forms, but the preliminary forms.

Q. And this was used by you as a working copy?

A. Yes, sir.

Q. Do you remember when this agreement, Defendants' Exhibit No. 20, was prepared by you in the first instance?

A. The latter part of 1907 or the early part of 1908.

Q. That is, when you were with the Seamless Steel Bathtub Company? A. Yes, sir.

Q. And it was prepared in your effort to get manufacturers of sanitary enameled iron ware to purchase your steel 4 shells under this license agreement? A. That is correct.

Q. At the time that you were in negotiation with Mr. Day and others, attempting to acquire an interest in or purchase the Arrott patent, did you prepare at that time any papers such as you had in mind to issue as licenses to manufacturers if you were able to acquire the Arrott patent?

A. Not that I recall.

Q. Now, I show you a paper entitled "Cooperative Selling And Purchasing Contract with Seamless Steel Bathtub

Company, Detroit, Michigan, manufacturers of 'Sanisteel' Porcelained Baths," and ask you what that is?

A. This is the form of license agreement that I was working on to put into effect between the Seamless Steel Bathtub Company and its distributors. It calls attention to the fact that the tubs are manufactured under certain patents, and provides that the goods so purchased must be sold in accordance with the terms to plumbers established by the Seamless Steel Bathtub Company.

Mr. NOBLE: I offer this instrument in evidence as "Defendants' Exhibit No. 21."

Paper referred to was then marked and filed as "Defendants' Exhibit No. 21."

Defendants' Exhibit No. 21 reads as follows:

CO-OPERATIVE SELLING and
PURCHASING CONTRACT with
SEAMLESS STEEL BATHTUB COMPANY
DETROIT MICHIGAN
manufacturers of
"SANISTEEL" PORCELAINED BATHS.

THIS AGREEMENT, made this day of 190 , between the Seamless Steel Bathtub Company, a Corporation organized and existing under the laws of the State of Michigan, party of the First (hereinafter called the "Company"), and of State of party of the Second. part, (hereinafter called the "purchaser"):

WITNESSETH:

THAT WHEREAS, the Company controls or is licensed under the following United States Letters Patent, relating to Sanisteel Steel Bathtubs and processes and apparatus used in the manufacture thereof, to wit:

Number	Date	Inventor	Description

THAT WHEREAS, the Company is therefore interested in maintaining the value of these letters patent, it is willing to offer the Purchaser the benefit of the Co-operative Selling and Purchasing Plan outlined herein;

AND WHEREAS, the Purchaser desires to purchase from the Company as Licensee under said Letters Patent, Sanisteel Steel Baths for the purpose of selling to others, and the Com-

pany is willing to sell Sanisteel Steel Baths to the Purchaser for that purpose; 1

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is agreed as follows:

1. The Company agrees to sell, and the Purchaser agrees to take and pay for, Sanisteel Porcelained Baths at the following prices:

Class A Grade A Guaranteed Baths (Porcelained inside only)

5′ 3″ Roll Rim "Lazarre" Baths	List Price	$27.00
5–½′ 3″ " " "Iole" "	" "	30.75 2

Discounts: Less Carloads 30 and 5%. Carloads 30 and 10%.

Class A Competition Baths (Porcelained inside only)

5′ 3″ Roll Rim Bath	List Price	$27.00
5–½′ " " "	" "	30.75

Discounts: Less Carload 30 and 10% Carload 30 and 10 and 5%

Single Crates for holding one Bath	50 cents net
Combination Crates for holding two Baths	75 cents net 3

Prices fob cars Detroit, subject to freight allowances and equalizations as given in printed Price List of Company dated

Class AA Grade A Baths (Porcelained both sides)

5′ 3″ Roll Rim "Queen" Baths	List	$90.00
5–½′ 3″ " " "Princess" "	"	105.00

Discounts: Lots of 1 to 12 inclusive	Discount	60–10%
Lots of 13 to 24 inclusive	"	60–10–5%
Lots of 25 to 49 inclusive	"	66–2/3% 4
Lots of 50 to carload (80)	"	66–2/3–5%

Boxing $2.00 extra net.
Prices fob Cars Detroit with no freight allowance.
Extra charges for all baths drilled "special"

Bell supply	$1.00	net
Overflow only	1.00	"
Cock Holes etc	1.00	"
Hole in Rim	.25	"

2. The Purchaser shall observe and strictly maintain the "resale" selling prices as follows:

Class A Grade A Guaranteed Baths

Discounts: Lots 1 to 12 inclusive		Discount	20%
13 to 24	"	"	20–5%
25 to 49	"	"	20–10%
50 to carload (120)			30–5%

Single Crates for holding one Bath 50 cents net
Combination Crates for holding two Baths 75 cents net

Prices fob cars Detroit, subject to Freight allowances and equalizations as given in printed Price List of Company dated .

Grade A Class AA Baths

Discounts: Lots of 1 to 6 inclusive		Discounts	50-10%
7 to 12	"		60%
13 to 20	"		60-5%
21-30			60-10%
31 to carload (80 baths)			66-2/3%

Boxing $2.00 extra net
Prices fob cars Detroit with no freight allowance.

Extra charge for all Baths drilled "special"

Bell Supply	$1.00 net.
Overflow only	1.00 "
Cock-Holes other than 3⅜" between centers	1.00 "
	.25 "

3. It is understood that the "resale" prices maintained in this agreement and the price list attached cover only the value of the product as furnished by the Company, and that no extra parts are to be furnished the Purchaser's customers without making an extra charge for same at market prices. In the event of it being necessary to advance resale prices the Purchaser agrees to adopt such advanced schedule of selling prices immediately upon notice from the Company that advanced resale prices become effective. Within 5 days of the Company's request in writing, the Purchaser agrees to advise the Company definitely whether it has or has not sold or offered to sell any product purchased in this agreement, at lower prices or on more favorable conditions of sale than those established by the Company.

4. The Company guarantees its "First grade guaranteed ware," bearing its Blue and Gold Guarantee Label, for a period of 5 years from date of sale, against "inherent defects" of any nature. This means that with ordinary uses and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge," which means that *in addition to replacing the goods, we will reimburse the Purchaser for Freight Charges, Cartage, cost of labor in taking out and installing "the replacing" fixtures as well as decorating charges, if they have been incurred.* 1 2

5. The Company guarantees its "Competition" (Second grade Baths showing minor defects in workmanship and *not* bearing our Guarantee Label) for a period of one year from date of sale against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of temperature, subjecting the tub to alternate hot and cold water, that the Porcelain Enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge," which means *that in addition* to replacing the goods, *we will re-imburse the purchaser for Freight and Cartage Charges*, but *will not be responsible* for any other charges in connection with "replacing." 3

6. The Company agrees to inaugurate a general publicity campaign to the consuming public, architects, plumbers, etc., and to furnish the Purchaser, free of charge, such printed matter as the Company may issue from time to time, that may be necessary to the proper publicity of its product.

7. In consideration of the Purchaser carrying a proper stock to meet the demand created by the Company, the Company agrees to allow the Purchaser to return at the purchase price any goods not disposed of within 6 months from date of shipment by the Company, provided they do not contain defects other than inherent defects arising from defective workmanship or material. 4

Q. When did you draw this agreement, Defendant's Exhibit No. 21? A. The latter part, I think, of 1908.

Q. So that prior to your leaving Detroit and going to Pittsburgh in the summer of 1909, you had worked for how

many years with the Western Electric Company and its branch companies? A. Eleven years.

Q. You had been in various positions which called upon you to work under the patent license agreements which they had during a large part of that time? A. Yes, sir.

Q. Both as a salesman and as a manager? A. Yes, sir.

Q. And in your connection with the Seamless Steel Bathtub Company you had drawn and attempted to put into operation several similar license agreements under patents, is that right? A. Yes, sir.

Q. How many furnaces did you have for the manufacture of bath tubs in the Seamless Steel Bathtub Company's plant?

A. We had four.

Q. What, if anything, happened in July or August, 1909, relative to the Sanitary Enameled Ware Association?

A. There was not any, then, as far as I know. It was in the shape of reorganization.

Q. What, if anything, happened as to yourself?

A. Oh, I received a letter from Mr. Cline, of the United States Sanitary Manufacturing Company at Pittsburgh, stating that they were forming a new association or reorganizing the old one, and that they were looking for a Commissioner. He said that if I was open for the position that he would be very glad to see what he could do towards my obtaining it.

Q. Now, what was the condition at that time of the business of the Seamless Steel Bathtub Company?

A. Well, I had spent in connection with Mr. Sloman about a year and a half trying to reorganize it, but it had gotten to such shape that I had about concluded that it was almost useless to do anything with the property. When I received this letter from Mr. Cline I was not quite sure whether I wanted to go to Pittsburgh or not, because I did hate to give up the reorganization of the Company, which I thought I might possibly get through.

Q. You were largely interested in that Company financially, were you not, and in the financial reorganization?

A. Yes; when I received the letter from Mr. Cline I showed it to Mr. Colquitt.

Q. Who was Mr. Colquitt?

A. Mr. Sloman's assistant. He was of the opinion that it would give me a good opportunity to get acquainted with the various manufacturers and try and put through the pat-

ent license agreement that I had attempted early in 1908. I talked the matter over with Mrs. Wayman, and she was of the same opinion, and it also struck me at the same time that I might be able to buy the patents myself and thereby become the licensor of the different companies. I accordingly wrote Mr. Cline a letter and made application for the position of commissioner of the Association that they were about to form or reorganize. 1

Q. Were you elected? A. Yes, sir.

Q. When were you elected to the position?

A. I think it was August 4, 1909.

Q. Were you present at the meeting at which you were elected? A. No, sir. 2

Q. How soon after your election did you go to Pittsburgh to take up your new duties? A. Within the next few days.

Q. That would have made it some time early in August, wouldn't it? A. Yes.

Q. As a result of your work when you were with the Seamless Steel Bathtub Company, did you sell many tubs, that is your personal work?

A. Well, I sold all the tubs, practically. I have forgotten just how many it was. It was something over twenty thousand, I believe. 3

Q. Now, you say that the talk you had with Mr. Colquitt and with your wife was had after Mr. Cline wrote you a letter? A. Yes, sir.

Q. Did you discuss with your wife and Mr. Colquitt the possibility or the thought, or did you have the thought and discuss it with them, that you might purchase the Arrott patent? A. Yes, sir.

Q. And did you discuss with them what your thought was that you might do with it if you did acquire it?

A. Yes, sir.

Q. What did you tell them? 4

A. I thought it would give me an opportunity to make a lot of money if I could get that patent and license all the manufacturers in the business.

Q. On a royalty basis? A. On a royalty basis.

Q. Now, did you discuss this thought or plan of yours of purchasing the Arrott patent and licensing other manufacturers with any manufacturer of sanitary enameled iron ware at that time? A. No, sir.

1 Q. You discussed it with your wife and with your business associate, Mr. Colquitt, is that right? A. Yes, sir.

Q. Shortly after that, did you make plans to finance yourself if you were able to buy this Arrott patent?

A. I laid the foundation for it.

Q. With whom and how? A. Mr. Eugene H. Sloman.

Q. Mr. Eugene H. Sloman was the gentleman with whom you had been associated in the Seamless Steel Bathtub Company? A. Yes, sir.

Q. And with whom you had been associated in your offices as far back as 1901? A. Yes, sir.

2 Q. And to whom you had given your assistance when he was in this experimental stage of these seamless steel bath tubs? A. Yes, sir.

Q. Did Mr. Sloman promise to assist you financially if you could succeed in your enterprise? A. Yes, sir.

Q. And later, when you did succeed in getting your option on the Arrott patent, did he assist you? A. Yes, sir.

Q. Now, in response to your election as Commissioner, which position you said you applied for in reply to a letter of Mr. Cline, did you undertake the duties of Commissioner of the Sanitary Enameled Ware Association? A. Yes, sir.

3 Q. And carry them out? A. Yes, sir.

Q. Had that association under various names been in existence prior to July or August, or whatever this date was, 1909? A. Yes.

Q. Had you, as a manufacturer of bath tubs, at one time been a member of it? A. Yes, sir.

Q. On behalf of the Seamless Steel Bathtub Company?

A. Yes, sir.

Q. You being the representative in that association of the Seamless Steel Bathtub Company? A. Yes, sir.

Q. I now show you a paper signed by numerous persons and ask you what that instrument is, the instrument consisting of three sheets?

4 A. These are articles of association, together with the objects of the Association, and signed by various manufacturers.

Q. What association do you refer to?

A. The Sanitary Enameled Ware Association.

Q. And is that the Association of which you have just

Q. And is that the Association which you have just spoken? A. Yes, sir.

Q. And of which you were at one time Commissioner? 1
A. Yes, sir.

Mr. NOBLE: I offer this instrument in evidence as Defendants' Exhibit No. 22, and ask that it be copied in the Record.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 22."

Defendant's Exhibit No. 22 reads as follows:

"We, the undersigned, manufacturers of enameled "sanitary iron ware, hereby agree to form an Associa- "tion to be known as 'The Sanitary Enameled Ware 2
"Association.' Said Association is formed and is to "be governed along the lines of a report on resolutions "and by-laws presented by a Committee selected and "empowered for such purposes. The said report and "its conditions are hereto attached and are a part of "this agreement and are not subject to change, ex- "cepting such variation as the wisdom of the Body may "from time to time, by a majority vote, decide.

"Witness the signatures of the parties hereto in the "presence of each other or in the presence of witnesses, "the latter provision being made for such members 3
"as are not here present today.

Dated Pittsburgh, Pa., August 4th, 1909."

"Blairsville Enameled Ware Co.,
F. D. Cook, Prest.

Union Sanitary Mfg. Co.,
C. E. Gates.

The Humphyres Mfg. Co.,
By D. A. Carpenter.

Wheeling Enameled Iron Co., 4
By J. E. Wright, Prest.

The Cahill Iron Works,
By F. H. Caldwell, Prest.

J. M. Kohler Sons Co.,
Walter J. Kohler, Pres.

The J. L. Mott Iron Works,
John Reid, Treasurer.

Colwell Lead Co.,
J. T. Duryea.

Standard Sanitary Mfg. Co.,
By Francis J. Torrance, V. P.

L. Wolff Mfg. Co.,
H. M. Hoelscher, Asst. Secy.

United States Sanitary Mfg. Co.,
A. H. Cline, Jr., Secy.

Clymer Mfg. Co.,
W. A. Guthrie, Pres.

National Sanitary Mfg. Co.,
F. G. Borden, Pres.

The McCrum-Howell Co.,
Howard T. Gates, Secretary.

The Day-Ward Co.,
By A. G. Ward.

A. Weiskittel & Son Co.,
By Anton Weiskittel.

The Barnes Mfg. Co.,
T. R. Barnes, Secy. & Gen. Mgr.

McVay & Walker,
Alex. C. Walker.

Iron City Sanitary Mfg. Co.,
J. A. Kelly, Secy. & Treas."

"THE OBJECT OF THE ASSOCIATION.

"RESOLVED:—That the manufacturers of enameled ware here assembled form 'An Association Of Manufacturers of Enameled Ware' with the object of general benefit and improvement of the business in which the several Concerns are engaged.

"#1.—The regulation of sizes of various styles and "patterns of wares.

"2.—Uniformity in catalogue or list prices for simi-"lar goods.

"3.—Uniformity in delivery points, keeping in mind

"the rights of the jobbers as to competition among 1
"themselves.

"4.—Protection as to freight classification and "freight rates on the products of the members of the "Association.

"5.—A general uniformity in the conduct of the "business with at all times due regard for the interests "of the parties hereto and proper and just respect for "the Law.

"6.—The Association is not formed to control or "regulate prices of goods manufactured by its mem- 2
"bers.

"The name of the Association shall be 'The Sani- "tary Enameled Ware Association."

"The officers shall be President, Treasurer, and Sec- "retary, with an Executive Committee of five, all of "whom shall be actively engaged in the manufacture of "enameled ware.

"A Commissioner or Actuary shall be employed at "a stated salary. His duties will be specified by the "executive committee, and their action shall be passed 3
"upon by the Association at its regular or special meet- "ings.

"All officers and the Executive Committee shall be "elected by ballot.

"The meetings of the Association shall be held on "the first Wednesday of August, October, December, "February, April, and June.

"The Executive committee shall meet monthly, at "such time and place as it may elect. The members of "the Executive Committee shall be allowed their re- "spective railroad fare and sleeping car fare incident 4
"to their attendance at the meetings of their Commit- "tee.

"Of the five members selected at this meeting, the "three receiving the highest numbers of votes shall "serve for two years from date hereof and the two re- "ceiving the lowest number of votes shall hold office "for one year and at the next annual meeting two "members shall be elected to this Committee, and at "the second annual meeting, the three members shall

"be elected. This paragraph is not to be construed to "prevent the election of any member at the expiration "of his term.

"In the interim of association meetings, the Execu- "tive Committee shall have full power to transact the "business of the Association, but shall take no action "that would be inconsistent with the rights and inter- "ests of the Association or that would render void "previous acts of the Association.

"The expenses of the conduct of the Association "shall be provided for by an assessment made upon "and collected from the members. The rate or pro- "portion shall be fixed by the Executive Committee "and as nearly as possible be in proportion to the vol- "ume of enameled iron business of the several mem- "bers.

"One vote shall be accredited to each concern mem- "ber of the association but any officer or corporation "may be represented by as many of their concerns at "any regular or special meeting as they desire."

Q. What were your duties as Commissioner of the Sanitary Enameled Ware Association?

A. My duties were to visit the various manufacturers and put into effect the objects for which the Association was formed.

Q. And are those objects the ones embodied in Defendants' Exhibit No. 22? A. Yes.

Q. During the time that you were Commissioner of the Sanitary Enameled Ware Association, or at any time, was there ever any resolution passed or proposed by that association, or any of its members, or of the executive committee, suggesting in any way, shape, form or manner the purchase by you or the assignment to you or the acquisition by you of either the Arrott, the Ditheridge or the Lindsay patents, or any of them? A. No, sir.

Q. Was there ever at any time a suggestion made to you by the members of that Association, either as members or as individuals, officially or in their private capacity that you should purchase, acquire or take an assignment of either the Arrott, the Ditheridge or the Lindsay patents or any of them?

A. No, sir; the idea of the acquisition of the patents was entirely my own.

Q. Was there ever any suggestion made by any member of that Association, either as a member of that Association or in his individual capacity, or by that Association or its executive committee, or any of its members, that you should acquire these patents, whether by purchase, by assignment or in any other way, and thereafter grant licenses to manufacturers of sanitary enameled iron ware? A. No, sir. 1

Q. Where did that idea come from? A. It came from me.

Q. How long had you had it in mind? A. Since 1908.

Q. By what was the idea suggested to you?

A. The idea to secure these patents was suggested to me by the experience that I had had in the electrical business and also, I saw the opportunity by the condition the enameling ware business was in, of buying these patents and making a considerable sum of money. 2

Q. And hadn't you also had some experience which you referred to with the Arrott patent in the manufacture of Seamless Steel Bathtubs?

A. Yes, sir; I had had experience with the Arrott patent, and the fact that we could not run our business without it, and I am sure that it is essential to all the other companies.

Q. Why did you undertake to acquire these patents?

A. Primarily to make money.

Q. For whom? A. For me. 3

Q. Did you ever have an understanding with any one or an agreement with any one that if you did acquire these patents that you would share with them in any way any money that you might make out of their exploitation?

A. No, sir.

Mr. NOBLE: Now, Mr. Grosvenor, I must close a title to some real estate which has been waiting for me to get back from Pittsburgh. That begins at one o'clock. I presume it will be over in an hour and a half, but if it is agreeable to you we will take an adjournment until three and then go on later this afternoon. 4

Mr. GROSVENOR: That is we will continue later than usual?

Mr. NOBLE: Yes.

At this point a recess was taken until three o'clock.

After Recess.

EDWIN L. WAYMAN, resumed the stand for a continuation of examination by Mr. Noble, and testified as follows:

By Mr. Noble:

Q. Will you please tell me now when you first began, after you severed your connection with the Seamless Steel Bathtub Company of Detroit, to negotiate to acquire the Arrott patent?

A. It was shortly after I came to Pittsburgh, I think in the latter part of August, I took the matter up with Mr. Ahrens with reference to buying the patent. I did not go much into detail with him because he referred me to Mr. Dawes, as he said it was a manufacturing proposition and to talk to him about it.

Q. Did you talk further with Mr. Dawes about the matter?

A. When I first took the matter up with Mr. Dawes he did not think very favorably of it. He said there were some people who were using it unlawfully and that they expected to sue them. I asked him not to do it, because I wanted to go more into details into the plans that I had in view, that is the purchase of it and the licensing of all the companies. I took the matter up again with Mr. Ahrens some time in September and gave him an outline of what I had in mind, but he said it was a pretty big subject and he did not have any opinion on it and referred me back to Mr. Dawes. I kept after Mr. Dawes and brought to his attention the fact that if I could buy the patent and license all the manufacturers—

Q. Of what?

A. Of sanitary enameled iron ware, that it would be the means of enabling certain companies to use the patent lawfully and that it would eliminate seconds from the market and that through the license a lot of odd sized articles, such as exist in lavatories, could be eliminated from the market. There were so many odd sized lavatories and goods of every description that they were beginning to be a nuisance to the jobber and the plumber and the architect and every one connected with the general industry. Also on account of the conditions in the jobbing trade, solid porcelain and vitreous chinaware were making great inroads and the jobbers generally were becoming dissatisfied with enameled iron ware, and

it was becoming very unpopular. Those were the subjects 1
that I emphasized with Mr. Dawes and referred to every time that I talked to him.

Q. Was vitreous china and solid porcelain competing in the market with enameled iron ware?

A. Solid porcelain did compete and competes now with what is known as the high grade tubs, the heavy tubs, that is, large sizes; and vitreous china competes especially in lavatories with enameled iron ware.

Q. Did you regard it as a wise commercial thing in the trade in sanitary enameled iron ware to attempt to eliminate seconds and improve the quality of the ware? 2

A. Yes. I think the production and especially the sale of seconds is the worst thing in the business. The market at the time I came to Pittsburgh was in such a shape that it was simply flooded with seconds, both by companies that did not use the Arrott patent and to some little extent by companies that were using the Arrott patent. These seconds were not disposed of other than as seconds by the manufacturers, but in a great many instances the plumbers would sell a second to a consumer as a first grade article. Now, the defects in a second are not apparent to the ordinary purchaser. Crazes or chips are not noticeable, that is before the 3
water is turned on, although some tubs that are shipped out show the defects apparently; but in a great many instances sinks or lavatories that are defective and sold as defective by the manufacturer are and have been palmed off on the consumer as a first grade article. Through this license and the general terms of it, the purchaser has been assured of getting exactly what he bought, that is, an honest article in every respect.

Q. Did you have these purposes in mind when you talked with Mr. Dawes in your negotiations with him to purchase the Arrott patent? 4

A. I think I made the most headway with Mr. Dawes on the manufacturing points involved.

Q. Did you express these ideas you just mentioned to Mr. Dawes?

A. Why, I talked to him all the time. I kept after him from day to day, either wholly or in part.

Q. You mean you expressed these ideas either wholly to him or in part? A. Yes, every time I saw him.

Q. Did you finally succeed in obtaining an option from him? A. Yes, sir.

Q. What date did you get your option from him?

A. On December 28.

Q. What year?

A. December 28, 1909; after all these talks we had had, then on that date—

Q. (Interrupting): Did you have all these talks on that day?

A. Oh, no; they were leading up to that day. On December 28 Mr. Dawes gave me an option on the Arrott patent.

Q. Was he acting for himself or for the Standard Sanitary Manufacturing Company?

A. I presume for the Standard Sanitary Manufacturing Company; certainly.

Q. What was the option?

A. Either for an exclusive license on a royalty basis for five years, they retaining a non-exclusive license, or if they would take a license they were to sell me the patents for the same length of time, five years, with the right to name the terms, conditions and provisions of the license agreement.

Q. Well, now, as you have stated it there, it apparently was that the right to name the terms and conditions under which you would grant licenses were connected with the option to purchase it. Is that what you meant?

A. No. It was connected with the exclusive license and the option to purchase it.

Q. Will you just state again, then, what the option was in the event that you took from them an exclusive license?

A. In the event that I took from them an exclusive license, I was to have full right to name the conditions, terms, &c., to my licensees.

Q. And if they sold you an exclusive license they were to retain a non-exclusive license, is that correct? A. Yes.

Q. Now, then, was there any part of the option relating to your purchase of the Arrott patent outright?

A. Well, I considered that the option on both.

Q. In the event of your purchasing the patent outright you proposed, then, if I understand you, to give them a license and other manufacturers of sanitary enameled iron ware?

A. Oh, yes, I intended to issue uniform licenses to all the

companies, including the Standard Sanitary Manufacturing Company.

Q. You say you intended to issue uniform licenses to all the companies, what do you mean by that?

A. That is, all the manufacturers of Sanitary enameled iron ware.

Q. How did you know that you could issue licenses to all the manufacturers of sanitary enameled iron ware?

A. Why, from the talks and letters that I had written, &c., I felt that I could license those companies just as I did finally license them.

Q. Now, after you had obtained the option upon the Arrott patent, what did you do?

A. I started to write letters to the different manufacturers and talked with them to get their consent to sign a license agreement with me under those patents.

Q. So, if I understand you, as soon as you got this option upon the Arrott patent you started out to see if you could get the manufacturers of sanitary enameled iron ware to take licenses from you? A. Yes, sir.

Q. Now will you tell me what you did to induce them to take licenses from you?

A. Well, I talked with them along the lines that I talked with Mr. Dawes.

Q. Just tell me what you did, will you, please?

A. I pointed out to them that through the terms of such a license as I was proposing, that seconds could be eliminated from the market; that the dimensions of goods could be standardized and simplified as to the number of certain types of goods; also the line as a whole could be made more profitable to the jobber, thereby increasing the use and distribution of the ware.

Q. What did you say to them about the patent upon which you had options?

THE WITNESS: I don't believe I understand your question.

Q. What did you say to the manufacturers whom you say you were trying to get to take licenses from you about the patents which you had under options, about the inventions covered by those patents?

A. Oh, I pointed out that the Ditheridge patent, upon which I had an option, and the Lindsay patent owned by the

1 Wolff Company on which I had an option, covered all the means that I knew of that goods could be manufactured by automatic processes.

Q. What did you say to them about the Arrott patent, its usefulness in the art, and so on?

A. Oh, well, I also elaborated on that—I talked to all of them on the lines that I talked to Mr. Dawes. I elaborated on that quite fully.

Q. You evidently omitted in your last answer the fact that you told them that you had an option on the Arrott patent. I call that to your attention and ask you if you dis-
2 cussed with them the Arrott patent?

A. Oh, yes, I did that right along. I told them that I had an option on the Arrott patent and on the Lindsay and Ditheridge patents, and was intending to license them all under these patents.

Q. Which was the basic patent? A. The Arrott patent.

Q. Then, when you said a moment ago that the Lindsay and the Ditheridge patents covered all the methods you knew of of manufacturing under an automatic process, did you consider the Arrott patent?

A. No, sir. The Arrott is the basic patent, and the Lind-
3 say and Ditheridge patents are infringements, as my counsel advised me. I also want to add the Nesbit patent which I was after.

Q. You mean you considered the Nesbit device as an infringement of the Arrott?

A. Yes, sir; I consider all automatic devices infringements of the Arrott patent. That is, any device in existence for sifting enameling powder on iron ware automatically.

Q. Have you ever taken any advice as to the Arrott patent being a basic patent?

A. Yes, sir; in Detroit I took the matter up with our at-
4 torney there when I was with the Seamless Steel Bathtub Company.

Q. What was the name of that attorney?

A. Mr. James Whittemore, also with Mr. Christy, of Christy & Christy.

Q. Now, going back a moment, Mr. Wayman, between the time that you talked with Mr. Ahrens on the second occasion which you mentioned, and December 28, when you got your option upon the Arrott patent from the Standard Sanitary Manufacturing Company through Mr. Dawes, did you have

any further talks with Mr. Ahrens, I mean in relation to buying the Arrott patent? 1

THE WITNESS: Between what time was that?

Mr. NOBLE: Read the question.

The stenographer then read the last question.

A. Yes, I had a short talk with him just before Christmas and he left the matter entirely with Mr. Dawes.

Q. So that your negotiations, if I understand you, in reference to the acquisition by you of the Arrott patent from the Standard Sanitary Manufacturing Company, were with Mr. Dawes chiefly? A. Yes, sir. 2

Q. Now, with whom did you conduct your negotiations to buy the Ditheridge invention of the Mott Company?

A. Mr. Hammann.

Q. And with whom did you conduct your negotiations to buy the Lindsay patent from the L. Wolff Company?

A. Mr. Clifford.

Q. You spoke of the Nesbit patent. To whom does that belong?

A. The Iron City Sanitary Manufacturing Company.

Q. Did you have any negotiations looking to the purchasing of that patent? A. Yes, sir. 3

Q. With whom were your negotiations?

A. Mr. John Kelly, the secretary and treasurer.

Q. Did you discuss with Mr. Kelly your plan to purchase his and the Arrott and other patents? A. Yes, sir.

Q. And did you tell him that you planned to attempt to get the manufacturers to take licenses from you under those patents? A. Yes, sir.

Q. Did you outline your plan to Mr. Kelly? A. Yes.

Q. Do you recall whether you outlined it to him in writing?

A. I think the latter part of December I gave him a general outline. 4

Q. Did you give a written outline of your plan to Mr. Dawes when you were conducting your negotiations with him? A. I think I did, yes.

Q. And to Mr. Hammann? A. Yes, sir.

Q. And to the Wolff Company? A. Yes, sir.

Q. Now, outside of those men, do you recall whether you gave a written outline of your plans to any one prior to December 28, 1909?

A. I think I gave one to Mr. Kohler. I am not positive about that. It was some time. Whether it was before or after I do not now remember.

Q. You do not recall whether it was in December or whether it was in January? A. No, I do not. I do not recall.

Q. When did you give an outline of your plans to such other of the manufacturers of sanitary enameled iron ware as you took this matter up with?

A. Well, from the first of the year on.

Q. After obtaining the option upon the Arrott patent and upon these other patents, what did you do with the manufacturers of sanitary enameled iron ware to induce them to take licenses from you?

A. I wrote them; I talked with the jobbers in various places and asked them to talk with the manufacturers and during the months of January and February I kept revising my licenses from time to time and finally asked some of the manufacturers in the latter part of February to meet me in Chicago on the first or second of March.

Q. Between that time you had, if I understand you, written and talked with substantially all the manufacturers of sanitary enameled iron ware? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. Was the Arrott patent well known to them?

A. Yes, sir.

Q. And its utility and usefulness? A. Yes.

Q. What did you find was their attitude toward acquiring a license under the Arrott patent?

A. They were quite favorable towards securing the license that I was proposing.

Q. Did they express themselves with respect to the value of the Arrott patent and its usefulness, etc.?

A. Why, I don't recall any particular expression for the reason that the value of the Arrott patent has been pretty well known for several years and its usefulness in the business has been long established.

Q. So that in the conversations you had about it, if I understand you, you assumed and they assumed the value of the Arrott patent and its usefulness, is that what you mean to say? A. Yes, sir.

Q. Did you, during the months of January and February, 1910, take this matter up with all of the companies

to whom you later granted a license, or with their representatives? A. Yes, I think I did. 1

Q. Were your talks with them at your office or at their offices or where, as nearly as you can now state?

A. Well, principally at their offices. I do not remember at that time talking in my office regarding it with the exception of—let's see—with the exception of after the meeting of February 1.

Q. You talked at your office there? A. Yes.

Q. But except as to the talk which you had with the manufacturers on February 1 after the meeting, your talks with them during the months of January and February were chiefly in their own offices? A. Yes. 2

Q. For what purpose did you visit them in their various offices?

A. For the purpose of trying to induce them to enter into a license agreement with me under these patents.

Q. Did you tell the manufacturers when you talked with them what patents you had options on?

A. I know I told them about the Arrott patent. Whether I told all of them about the other two patents, I do not recall.

Q. Did you tell them as you went around to their various offices as you have described, what your plan was? 3

A. Yes, sir.

Q. And was your plan as you told it to them substantially as you later embodied it in the license agreements similar to Petitioners' Exhibit No. 9, known as the "License Agreement" and Exhibit 11, known as the "Jobber's License Agreement?"

A. Yes, sir; with some additions and eliminations.

Q. Now, you spoke a moment ago of talking with manufacturers on February 1, 1910 after a meeting. Will you please tell me what you said to them, or, if you cannot remember the words, then the substance of what you said? 4

A. I called their attention to the fact that I considered the principal trouble in the enameling business was the production and sale of seconds, and that under the general terms of the license which I was proposing that I thought the manufacturers could improve their goods, popularize them with the jobber by creating attractive trade conditions, and that goods to a great extent could be standardized. I asked for an expression from those present as to

what they thought of the plans that I had been talking to them about from time to time.

Q. Did any of them give any expressions of opinion?

A. Well, some did. Some would not commit themselves, but the majority said that they were in favor of the license as proposed.

Q. On page 30 of the printed record Mr. Grosvenor was asking you some questions about the February 1 meeting. He asked you: "Who did some of the talking?" And you replied: "A. I don't recall that any of them did any of the talking, with the exception of answering whether such a matter in its proposed rough form would meet with their approval." He then asked you: "What proposed rough form?" To which you replied: "A. I called attention to the fact that in my estimation the principal trouble with the enameling business was the fact that seconds—" at that point he interrupted you. What were you going to say, if you recall, in reply to that question?

A. That the principal trouble with the enameling business was the production and sale of seconds, and through this license agreement their production and sale could be prohibited.

Q. What is a second?

A. A second in the enameling business is an article that may be crazed or chipped or rough or containing dirty powder.

Q. Would it be fair to characterize it as any article of sanitary enameled iron ware which is defective in any way?

A. You might say defective inherently or unsightly through defective workmanship.

Q. Well, why was the manufacture and sale of seconds a bad thing, or the principal trouble, with the enameling business?

A. It tended to reduce the tone of the business in this way: Some companies were putting out quite a lot of seconds. Other companies were starting to make cheaper ware to meet the competition afforded by the companies whose output was large on seconds. It seemed to be hurting the business through the jobber right down to the consumer. In other words, the jobbers being forced in the position of handling seconds more or less were really at the mercy of the plumber, when the plumber had to

take out a defective article, although it having been sold as a first class article. 1

Q. What effect upon the trade in sanitary enameled iron ware did the manufacture and sale of seconds have, if any?

A. Why, it was beginning to make enameled ware unpopular with the jobbers. I know several jobbers told me they would not sell it unless they had to, that they were pushing solid porcelain and vitreous chinaware.

Q. Do you know from your experience as a manufacturer of sanitary enameled iron ware and as a salesman of it while you were with the Seamless Steel Bathtub Company, whether this condition which you found in the business of sanitary enameled iron ware was having a bad effect generally on the business? 2

A. It was. It was a very bad situation when I went to Pittsburgh. Those were the conditions when I went over there, and I was somewhat familiar with those conditions from time to time previously.

Q. Did you, after granting licenses to the various manufacturers to use the Arrott patent, find that the quality of the goods improved or changed in any way?

A. Well, of course, previous to my obtaining the Arrott patent quite a number of companies were using the Arrott patent. Others were not. But the fact that the sale of seconds was prohibited under that license agreement did improve the quality of the ware that was sold. 3

Q. I show you now Petitioner's Exhibits No. 108 and No. 109 and ask you whether the proposed rough form which you spoke of, in reply to Mr. Grosvenor's question, at the talk which you had on February 1, was similar to this?

A. I think Exhibit 109 was similar, but I do not recall No. 108. That (indicating Petitioner's Exhibit No. 109) I think was similar, but I do not recall No. 108.

Q. Petitioner's Exhibit No. 109 was somewhat similar to the rough form that you had in February, 1910, is that correct? A. Yes. 4

Q. You do not recall anything about Exhibit 108?

A. No, I do not.

Q. As I understand you, between the first of the year and during the months of January and February you revised the rough drafts which you had, from time to time, is that correct? A. Yes.

Q. Where did you get the ideas which you embodied in these proposed license agreements in these rough forms from time to time?

A. Why, from the electrical business and the licenses that were in existence when I was connected with the Western Electric Company.

Q. And you developed them somewhat while you were with the Seamless Steel Bathtub Company? A. Yes.

Q. What progress had you made in your efforts to get manufacturers to take licenses from you under the Arrott and the other patents during those two months?

A. Well, I had made progress to the extent that they were favorable towards taking a license, but I had not gotten the matter in such concrete form where I knew whether I could get the license agreement into effect or not. In order to come to a conclusion I called several of the manufacturers together in Chicago on March 2nd.

Q. Who was there?

A. There was Mr. McCrum, of the McCrum-Howell Company; Mr. Howard T. Gates, of the same company; Mr. Kohler, Mr. Murphy, of the J. M. Kohler Sons Company; Mr. Hoelscher, of the L. Wolff Manufacturing Company, Mr. Cline, of the United States Sanitary Manufacturing Company, and Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. How did those gentlemen come to be there?

A. Why, I requested them to come and meet me in Chicago.

Q. Now, what did you say to them that day?

A. Well, I was late in getting to Chicago that day, if I remember correctly, and I met them at the Chicago Athletic Club about 11 o'clock in the morning. I went over the subject matter of the license in general, that is the general ideas that I had been talking to them about and writing about, and I asked for some expression from them as to whether or not they would or would not enter into a license.

Q. As to whether the men there on behalf of their respective companies would accept a license from you?

A. Yes, sir; along the lines that I had been proposing.

Q. Now, after that meeting, what did you next do?

A. Well, I drew up a memorandum of agreement that evening.

Q. Where, and under what circumstances?

A. I had not been able to accomplish anything with these gentlemen at that meeting, and I thought I would write up a memorandum of agreement and see if I could not stir around and get some signatures. So that night I got it up at my mother-in-law's house and I had it typewritten the next morning at the LaSalle Hotel. 1

Q. Did anybody help you draw it up? A. No, sir.

Q. Or assist you in any way? A. No, sir.

Q. I show you Petitioner's Exhibit No. 3 and ask you if that is the instrument which you drew up that night and had written the next day? A. Yes, sir.

Q. Did you have any legal advice in drawing up that instrument? A. No, sir. 2

Q. Did you talk to any lawyer about it? A. No.

Q. Was this a proposed license agreement?

A. No; that is simply a memorandum of agreement to enter into a license agreement.

Q. In other words, this was the paper that you drew up to get some signatures to it to make progress, is that the point? A. Yes, sir.

Q. Now, did any of these provisions in here come from any of these other agreements that you have spoken of, when you were with the Seamless Steel Bathtub Company or the Western Electric Company—are they similar to them? 3

A. Some of the ideas are embodied in there, yes.

Q. This was drawn up and typewritten where?

A. At the La Salle Hotel, as I remember it. It was composed on March 2nd and written up on March 3rd.

Q. Where is the La Salle Hotel?

A. At Chicago, Illinois.

Q. Tell me to whom you first presented this for signature and the circumstances under which you obtained the various signatures?

A. I presented it to the L. Wolff Manufacturing Company in Chicago, Illinois, on March 3rd. That was the first signature. Then it was signed next by the— 4

Q. Won't you tell me whom you talked with in each place?

A. I talked with Mr. Hoelscher at the L. Wolff Manufacturing Company's place.

Q. Did he confer, when you presented it to him, and before signing it, with any other manufacturer of sanitary enameled iron ware?

Mr. GROSVENOR: I object to that.

Mr. NOBLE: If you know.

Mr. GROSVENOR: This witness cannot say whether the L. Wolff Company consulted any other manufacturers?

A. I know that he did not, because the other manufacturers left the city on the night of March 2nd and none of them had seen this paper before Mr. Hoelscher signed it.

Q. You did not even have the paper written out in rough form when you talked to the gentlemen on March 2nd, did you?

A. No, sir; I may have had some memoranda, but that is all.

Q. Did you have this paper written out when you talked to them? A. No, sir.

Q. Now, what company did you next present it to?

A. The Standard Sanitary Manufacturing Company.

Q. Where?

A. At Mr. Torrance's office in Pittsburgh, in the Bessemer Building.

Q. With whom did you talk? A. Mr. Torrance.

Q. Did he confer with any other manufacturer before signing it on behalf of the Standard Sanitary Manufacturing Company?

Mr. GROSVENOR: I object to that question also. Of course, this witness has no knowledge and cannot properly testify as to whether Torrance did or did not, before signing that, talk to the other manufacturers. If the question is limited to the actual time that Wayman was present and saw him, of course, I have no objections; but the question as it is asked is too broad.

Mr. NOBLE: Will you answer the question?

A. I am quite sure that he did not.

Q. Was it signed on the occasion of your visit there when you presented it to him?

A. I presented that to him on the fourth and he signed it the next day in his office.

Q. Were you present when he signed it? A. Yes, sir.

Q. Now, who was the next company to which you presented it?

A. The United States Sanitary Manufacturing Company,

to Mr. Cline, at his office in the Arrott Building, Pittsburgh. 1

Q. Did he sign it that same day?

A. Yes, as I recall it, he signed it that evening at his house.

Q. Now, what was the next company?

A. A. Weiskittel & Son Company, Mr. Anton Weiskittel, at Baltimore, signed that at the Belvedere Hotel.

Q. Were you present when he signed it? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it?

Mr. GROSVENOR: I object to the question unless it refers to the time—

2

A. As I recollect, his brother was present, but he did not confer with him before I got the signature.

Q. His brother is connected with the same company?

A. Yes, sir.

Q. Now, what was the next company?

A. The McCrum-Howell Company signed by Mr. Lloyd G. McCrum in his office.

Q. And did you present it to him there? A. Yes, sir.

Q. Did he sign it in your presence? A. Yes, sir.

Q. Did he confer with any other manufacturer before doing so? A. No, sir.

3

Q. Where is his office? A. New York City.

Q. Who is the next company?

A. The Blairsville Enameled Ware Company, New York City, signed by Mr. A. W. Shipman.

Q. Was it signed in your presence? A. Yes, sir.

Q. Between the time you presented it to Mr. Shipman and he signed, did he confer with any other manufacturer?

A. No.

Q. By the way, did the Blairsville Company take a license from you later?

A. No, they did not. The next signature was that of the National Sanitary Manufacturing Company, by F. G. Borden, president. 4

Q. Where did he sign it?

A. I don't recall whether he signed it in my office or in his office. It was in Pittsburgh that it was signed.

Q. Were you present when it was signed? A. Yes, sir.

Q. Between the time you presented it to him and the time that he signed it, did he confer with any other manufacturer of sanitary enameled iron ware? A. No, sir.

1 Q. Now, the next company?

A. The Barnes Manufacturing Company, at Mansfield, signed by T. R. Barnes.

Q. Where did he sign it? A. At his office in Mansfield.

Q. Were you present when he signed it? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it?

A. No, sir; the next is the Humphryes Manufacturing Company, by Mr. Reid Carpenter, the treasurer.

Q. Where did he sign it?

A. Signed it in the depot at Mansfield.

2 Q. Did you take it to him there personally? Yes, sir.

Q. And did he confer with any other manufacturer before signing it? A. No, sir.

Q. What is the next?

A. The Union Sanitary Manufacturing Company, by C. E. Gates, second vice-president and general manager.

Q. Where did he sign it?

A. At his office, at Noblesville, Indiana.

Q. Did you take it to him in person? A. Yes, sir.

Q. And did he confer with any other manufacturer before signing it?

3 A. No; the next is the Wheeling Enameled Iron Company, J. E. Wright, president. He signed it at the McClure House, Wheeling, West Virginia.

Q. Did you present it to him yourself? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it? A. No, sir.

Q. I want to ask you again: At the conference that you had with the gentlemen in Chicago on March 2nd, to which you have referred, this agreement had not then been prepared, is that right? A. Yes, sir.

Q. Nor had any other paper been prepared of which this

4 is a copy? A. No, sir.

Q. Did the persons who signed this instrument see it for the first time when you presented it to them at the various places which you have mentioned? A. Yes, sir.

Q. Do you recall between what dates you procured the signatures to this instrument which is Petitioner's Exhibit No. 3? A. Yes, between March 2 and March 17.

Q. Did you get any signatures on March 2? A. No.

Q. Between January 1 and March 2 or 3 when this in-

strument was prepared, was there any agreement between the manufacturers to sign such a paper? A. No, sir. 1

Q. Or any paper? A. No, sir.

Q. I mean, of course, any paper relating to the Arrott, the Dithridge or Lindsay patents or the proposed license which you were discussing with them?

A. No, sir; that is what I understood you to mean.

Q. And there was no such agreemnt? A. No, sir.

Q. This instrument, Petitioner's Exhibit No. 3, was not similar to any of the proposed drafts of a license agreement which you had previously had or sent to the various manufacturers? 2

A. No, that is simply a memorandum of agreement to enter into a license agreement; that is all.

Q. In visiting the various manufacturers whom you have testified you did visit, and procuring their signatures to Exhibit No. 3, and in writing to them relative to the proposed license agreement, and in talking with them relative thereto, did you visit them, write them or talk with them as the Commissioner of the Sanitary Enameled Ware Association or as an individual?

A. That was a personal matter altogether.

Q. What do you mean when you say it was a personal matter altogether? 3

A. That is, I mean by that I was not visiting them as Commissioner of the Sanitary Enameled Ware Association.

Q. What were you visiting them as, and for what purpose?

A. I was visiting them as an individual for the purpose of getting their signatures to a memorandum agreement to enter into a license agreement with me.

Q. And the previous visits which you made to them in January and February, and the letters which you wrote to them relative to your license agreement, did you visit them or write to them as Commissioner or as an individual? 4

A. As an individual.

Q. And what was your purpose in writing them and visiting them?

A. To get them to enter into a license agreement with me.

Q. What were you trying to do?

A. I was trying to make money by getting them to enter into a license agreement with me under these patents.

1 Q. I notice in looking through the exhibits that there are one or two letters relative to this license agreement which are signed by you and the word "Commissioner" is underneath them?

THE WITNESS: You mean with reference to this subject?

Mr. NOBLE: Yes.

THE WITNESS: Let me see them.

Mr. NOBLE: I call your attention to Petitioner's Exhibit No. 49?

2 A. Well, I presume that my stenographer in sending out the letters regarding both this business and the Association, typed that and I did not notice it. It was written, though, in the capacity of an individual and not as the Commissioner of the Sanitary Enameled Ware Association.

Q. Now, the word "Commissioner" appearing in this connection, was that an oversight or a mistake, or was it your intention that the word "Commissioner" should be there?

A. No, it certainly was not my intention. It was an oversight or a mistake.

3 Q. The work you were doing on these patents, was it or not done as Commissioner? A. No, sir.

Q. "No, sir," what?

A. It was not done as Commissioner but as an individual.

Q. For whom were you working in doing this work?

A. I think I was working for myself.

Q. Were you working for any one else? A. No, sir.

Q. When did you exercise your option and determine to buy the Arrott patent, that is, take an assignment of the Arrott patent absolutely, as distinguished from taking the exclusive license you spoke of?

4 A. That was on March 5, when the preliminary agreement was signed by Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. You mean the preliminary agreement which is known as Petitioner's Exhibit No. 3?

A. Yes, sir; when Mr. Torrance signed that I said, "This means you will sell me your patent?" And he said, "Yes, and take the details of it up with Mr. Dawes," which I did later.

Q. When was the option which you had with the Standard Sanitary Manufacturing Company reduced to writing? 1

A. About the middle of March, 1910.

Q. Who did it for you?

A. Bakewell and Byrnes, patent attorneys, Pittsburgh.

Q. Why was not that signed at that time?

A. As I recall it, Mr. Dawes sent the paper over to his patent attorneys, Messrs. Christy & Christy, to have them look over them and they were not returned until later, so that the paper was not signed until May 4.

Q. Was there any reason for delaying the signing of it?

A. No, sir.

Q. When was the option that you had with the Wolff Company to purchase the Lindsay patent reduced to writing? 2

A. About the same time as the Arrott.

Q. And why was not that signed until later?

A. I gave the papers, I think, to Mr. Hoelscher, in New York, and he mislaid them and I sent him duplicates some time in April, the latter part of April.

Q. And when was the agreement to assign the option reduced to writing? A. About the middle of March.

Q. When was it executed? A. 4.

Q. When was the option which you had with the Mott Company reduced to writing? 3

A. About the same time as the others, the middle of March.

Q. And when was that signed?

A. That was signed on May 5.

Q. Did any manufacturer of Sanitary Enameled Iron Ware suggest to you the taking over of these patents for the purpose of granting licenses under them? A. No, sir.

Q. Did any manufacturer suggest making an assignment of these patents over to you at all?

A. No, it was my own idea right from the start. 4

Q. Did any manufacturer, prior to your getting options on the Arrott or the other patents, jointly with any other manufacturer discuss the purchase of these patents and the making of such a license agreement as you later made, or one similar to it? A. No, sir; not that I recall.

Q. Well, did they? A. No, sir.

Q. Did you ever at any time get any idea from any of these defendants that they wanted you to get up this license agreement? A. No, not at all.

1 Q. I notice in looking through the exhibits that there are one or two letters relative to this license agreement which are signed by you and the word "Commissioner" is underneath them?

THE WITNESS: You mean with reference to this subject?

Mr. NOBLE: Yes.

THE WITNESS: Let me see them.

Mr. NOBLE: I call your attention to Petitioner's Exhibit No. 49?

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Q. Now, the word "Commissioner" appearing in this connection, was that an oversight or a mistake, or was it your intention that the word "Commissioner" should be there?

A. No, it certainly was not my intention. It was an oversight or a mistake.

3 Q. The work you were doing on these patents, was it or not done as Commissioner? A. No, sir.

Q. "No, sir," what?

A. It was not done as Commissioner but as an individual.

Q. For whom were you working in doing this work?

A. I think I was working for myself.

Q. Were you working for any one else? A. No, sir.

Q. When did you exercise your option and determine to buy the Arrott patent, that is, take an assignment of the Arrott patent absolutely, as distinguished from taking the exclusive license you spoke of?

4 A. That was on March 5, when the preliminary agreement was signed by Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. You mean the preliminary agreement which is known as Petitioner's Exhibit No. 3?

A. Yes, sir; when Mr. Torrance signed that I said, "This means you will sell me your patent?" And he said, "Yes, and take the details of it up with Mr. Dawes," which I did later.

Q. When was the option which you had with the Standard Sanitary Manufacturing Company reduced to writing? 1

A. About the middle of March, 1910.

Q. Who did it for you?

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Q. When was it executed? A. May 4.

Q. When was the option which you had with the Mott Company reduced to writing? 3

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A. That was signed on May 5.

Q. Did any manufacturer of Sanitary Enameled Iron Ware suggest to you the taking over of these patents for the purpose of granting licenses under them? A. No, sir.

Q. Did any manufacturer suggest making an assignment of these patents over to you at all?

A. No, it was my own idea right from the start.

Q. Did any manufacturer, prior to your getting options on the Arrott or the other patents, jointly with any other manufacturer discuss the purchase of these patents and the making of such a license agreement as you later made, or one similar to it? A. No, sir; not that I recall. 4

Q. Well, did they? A. No, sir.

Q. Did you ever at any time get any idea from any of these defendants that they wanted you to get up this license agreement? A. No, not at all.

1 Q. Did any of them contribute anything or agree to pay or offer to pay any part of the consideration which you paid to acquire these patents? A. No, sir; absolutely nothing.

Q. Did any of them pay or offer to pay you any money or valuable thing to get up these license agreements?

A. No; no, sir.

Q. Did the Sanitary Enameled Ware Association or its executive committee or any other committee assist you in any way in bringing about the acquirement by you or the assignments to you of the Arrott, the Ditheridge or the Lindsay patents? A. No, sir.

2 Q. In purchasing those patents did you discuss it with the owners together, or at their various places of business?

A. At their various places of business.

Q. And they were not together at the time? A. No, sir.

Q. You took your negotiations up with them singly, if I understand you? A. Yes, sir.

Q. And separately? A. Yes, sir; and at different places.

Q. And at different times? A. Yes, sir.

Q. Did the Sanitary Enameled Ware Association or its executive committee or any of its committees or any of its members request you or suggest to you or throw out any hint

3 to you that you do anything or take any steps toward acquiring these patents?

A. No, sir; it was my own conception altogether. It was my own idea.

Q. Did you ever discuss the question of buying or acquiring these patents with the Association or its executive committee or any of its committees? A. No, sir.

Q. Now, after you got this preliminary agreement, Petitioner's Exhibit No. 3, in shape and procured the signatures to it as you have testified, what did you next do?

A. I consulted Mr. Jackson of Noble, Jackson & Hubbard

4 of New York City. I had gotten the licenses into pretty fair form at that time and Mr. Jackson and I went over the various paragraphs together.

Q. Now, as a result of that talk with him, did you make any changes in your proposed license agreement and proposed jobber's license agreement? A. Yes, I made some.

Q. At the time you got these options on the Arrott patent did you know about the patent having been sustained in the courts? A. Oh, yes.

Q. How far back did you know it had been sustained?

A. Well, when I was with the Seamless Steel Bathtub Company. It was, I think, in May, 1907. 1

Q. At the conference which you had with Mr. Jackson about the license agreements, was anything said about the Arrott patent having been sustained?

A. Yes, I remember the first thing he asked me about was the Arrott patent, what it was and all about it, and I gave him the decisions on the Arrott patent and also, I think, a copy of the patent at the time.

Q. You left these papers with him? A. Yes.

Q. In your conferences were there other cases relative to these license agreements discussed? A. Yes. 2

Q. Do you recall what cases, or some of them, and what was said about them?

A. Why, I recall something about the Rubber Tire Case—

Mr. GROSVENOR: I object to this. It is immaterial and incompetent. It certainly can have no bearing on this case, what one lawyer said, and whether he expressed the opinion that the arrangement was or was not unlawful, the question now being before the Court for determination.

Mr. NOBLE: Will you read the question?

The last question was then read by the stenographer. 3

A. (Continuing): I recall something about the rubber tire case and the Goshen case and several other cases which Mr. Jackson called my attention to. Mr. Jackson stated that if the Arrott patent was useful and necessary in the business, that it was perfectly lawful for me to issue licenses as I had proposed.

Q. Did you ever discuss the license agreements or the jobber's license agreement with any other lawyers?

A. Yes, Mr. Byrnes of Bakewell & Byrnes and Mr. Christy of Christy & Christy, and also Governor Lyon of Lyon & Hunter. 4

Q. And what advice did they give you?

A. That they were lawful.

Q. Do you remember anything that they told you?

THE WITNESS: In respect to what?

Mr. NOBLE: Just read the question.

The stenographer then read the question referred to.

A. Why, in effect they told me that they were lawful.

Q. Did they explain to you what the rights, under the patent laws, of the owner of patents were? A. Yes—

Mr. GROSVENOR (interrupting): I make the same objection to all this line of questioning.

A. (Continuing): I remember a quotation from the Rubber Tire case that in his domain the patentee is czar and has a right to impose or exact such provisions and conditions as he sees fit.

Q. Now, in getting up these licenses and jobber's licenses, what were you trying to do?

A. I was trying to make money through exploiting the patents and licensing all the various manufacturers to use them.

Mr. NOBLE: Will you adjourn now?

Mr. GROSVENOR: Yes, counsel for the Government desires to notify counsel for the defendant that he will require one day for rebuttal, and he suggests that the hearing be had immediately after the close of the defendant's case on Saturday, that is, that we have a hearing in Pittsburgh on Monday. That will not require more than one day for the rebuttal.

Mr. NOBLE: I will try to arrange it. It will be in a day or two, anyhow. Mr. Honeyman also sent me word that he wants to take some testimony before the week is over.

Mr. GROSVENOR: All right.

At this point the hearing was adjourned until the following morning at 11 o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2

New York, N. Y., Post Office Building,

April 21, 1911.

Pursuant to adjournment the taking of evidence on behalf of the Defendants was resumed at eleven o'clock at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HEBRERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Manufacturing Company and others.
ROBERT B. HONEYMAN, Esq.,
on behalf of the Colwell Lead Company, Jesse T. Duryea and B. O. Tilden.

3

Mr. HONEYMAN: Mr. Grosvenor, I would like to put two witnesses on the stand now, if you have no objection to my interrupting Mr. Noble's examination of Mr. Wayman, and if Mr. Noble has no objection.

Mr. NOBLE: That is all right.

Mr. GROSVENOR: Very well.

4

JOHN A. LEFFERTS, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. What is your business, Mr. Lefferts?

A. General Superintendent of the Colwell Lead Works factory at Elizabeth.

1 Q. You have charge of their factory where they manufac ture sanitary enameled iron ware? A. Yes, sir.

Q. And that is the only factory that they have where they manufacture sanitary enameled iron ware?

A. Yes, sir; as far as I know.

Q. Well, you would know if they had any other factory where they manufactured sanitary enameled iron ware?

A. Yes, sir.

Q. Have they any such? A. No, sir.

Q. How long have you been in the enameled ware business? A. Ten years.

2 Q. And you are familiar with the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. What do you know about the installation of the Arrott patent at the Colwell Lead Company? When did you install them?

A. We installed the pneumatic sieve, which I presume you mean by the Arrott patent, some time in the summer of 1909.

Q. Do you recall having any correspondence yourself with Mr. Dawes of the Standard Sanitary Manufacturing Company, in the spring of 1909?

A. I think it was earlier than that that I had some cor-
3 respondence with the Standard people. I don't know if it was with Mr. Dawes personally.

Q. But you personally had some correspondence with the Standard Sanitary Manufacturing Company? A. Yes.

Q. On the subject of your using their pneumatic sieve?

A. Yes, sir.

Q. Did you conduct the correspondence yourself with them on that subject?

A. No, during the course of that I found that it had been taken up by some one at our New York office also and they finished the correspondence, as I understood it.

4 Q. Then you were instructed to install the pneumatic sieve? A. Yes, sir.

Q. And you did so in the summer of 1909? A. Yes.

Q. And you have used it ever since? A. Yes.

Q. You are familiar with the old hand process of enameling generally in use for the past ten years in the manufacture of enameled iron ware? A. I am.

Q. Do you consider the Arrott or the pneumatic sieve an advantage over the ordinary hand process?

A. I would not have attempted to use it if I did not think so. 1

Q. You do, then, consider it an advantage? A. I do.

Q. What do you do with the product that you manufacture at Elizabeth?

A. Ship it to our New York warerooms, and office.

Q. Is that true of all your product there? A. Yes, sir.

Mr. HONEYMAN: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lefferts, have you in the last year distinguished in your products between what was made at night and what was made in the day time? 2

THE WITNESS: Distinguished in what way?

Mr. GROSVENOR: Well, have you classified what was made at night as a different grade from that which was made in the day time?

A. No.

Q. You installed this Arrott patent in the summer or the early part of 1909, is that right?

A. To the best of my recollection that is right.

Q. Is it not a fact that during the whole of the time of the summer of 1909 or the larger part of that time, you have used the Arrott patent during the day and the old banjo dredge at night? 3

A. Only partly. We have used the Arrott dredger or patent at night as well as in the day time.

Q. Yes, but have you not used the banjo dredge during a large part of the past year at night time?

A. Before answering that as to the larger part of the night time, I would have to get some records showing when we stopped a certain quantity of night work.

Q. Is it not a fact that during the last year you have used the banjo dredge at night? 4

A. We have used it at night to a certain extent; yes, sir.

Q. Very largely? A. Not very largely.

Q. Well, how much?

A. I should have to figure that out, because when we have to run certain portions of our factory night and day outside of the enameling portion, we were compelled to use the banjo sieves because we had not rigged up all of our furnaces at that time for the pneumatic sieve.

1 Q. When did you have all your furnaces rigged up for the pneumatic sieve?

A. At the time we had them all rigged up it was in 1909, in the summer time.

Q. All of them?

A. Yes. All of them that we had built at that time.

Q. You had rigged up? A. Yes.

Q. Have you built any since? A. Yes.

Q. Have you rigged those up for the pneumatic dredger?

A. Yes, sir.

Q. Is it not a fact that since they have been rigged up
2 for the pneumatic dredger you have used the banjo dredge?

A. Yes.

Q. The hand dredge? A. Yes.

Q. Why is that?

A. Because we do not keep our compressor running at night time to keep up the compressed air for the pneumatic sieve.

Q. In other words, the advantage of the Arrott dredger over the hand dredge does not compensate or equal the cost of running the compressor, is that right?

A. That is about right, yes, for our sized plant.

3 Q. How many furnaces have you?

A. At present we are running two.

Q. And are you using today at night the hand dredge?

A. Yes, sir.

Q. And did you do that last month? A. I think we did.

Q. And did you do that the month previous?

THE WITNESS: That would bring it to February—

MR. GROSVENOR: Yes.

Q. You are confining me down to too narrow a point. I cannot recall at the present time whether we were running
4 at that time a double shift or not.

Q. But you find it cheaper, do you, to use the banjo dredge at night when you have only two furnaces running?

A. Well, we find it to our advantage rather than having the coal used and all the expense that would accrue if charged up alone against the pneumatic sieve.

Q. It is a fact, then, is it not, that it is possible to make good enameled ware by the hand dredge?

A. In the past we were compelled to make the ware whether it was good or bad by hand power.

Mr. GROSVENOR: Will you read the question to him, please? 1

The last question was then read by the stenographer.

Mr. GROSVENOR: Will you answer that, please?

THE WITNESS: Did I not answer that?

Mr. GROSVENOR: Read the answer and see if he cannot answer it more definitely?

The stenographer then read the question and answer referred to.

Mr. GROSVENOR: Can you answer that more definitely?

THE WITNESS: What is the question again, please? 2

The last question was again read by the stenographer.

A. I should not say it is not possible to make good enameled ware.

Q. Well, it is possible, is it not?

THE WITNESS: In comparison to the pneumatic sieve, do you mean?

Q. Is it possible to make good enameled ware with the hand dredge?

A. I think I have admitted that it is. And, it depends upon the definition of the word "good." 3

Q. At the beginning of the cross examination you testified that today you do not distinguish in classification the products made in the day time and that made at night time; is that right? A. We make no distinguishing features.

Q. Do you have charge of the making of the powder?

A. Yes.

Q. Is that an important part of the business?

A. We so call it, yes.

Q. Well, do you consider it so? A. Yes, sir.

Q. And the making of the slush, is that an important part of the business? A. Yes. 4

Q. Are those secrets in the business, the composition of the slush and the composition of the powder?

A. To a great extent they are.

Q. By a great extent, what do you mean? The formula of stating the proportion in which the ingredients are mixed is a secret, is it not?

THE WITNESS: At our particular plant?

Mr. GROSVENOR: Yes.

1 A. I believe it is a secret. I don't believe anybody else knows about it but myself.

Q. And you would not let anybody else know about it, would you? A. Hardly, willingly.

Q. How about the slush coat, would you let anybody know about that? A. The same thing applies to that.

Q. Did you take any part for the Colwell Lead Company in the entering into of the license agreement with Wayman? A. No.

RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

2 Q. Each manufacturer of enameled iron ware, to a certain extent, thinks his own enameling powder has the best formula or composition for getting the best results, doesn't he? A. Yes, sir.

Q. And you think your formula or the proportion in which you used the ingredients gives you a superior enamel, about which you will not let the other manufacturers know? A. Yes, sir.

Q. And the same thing is true of all enameled ware manufacturers? A. Yes, sir.

Q. And the same is true as to the slush coat? A. Yes.

3 Q. You struggled with the question of what was considered good enameled ware. That word "good" is relative to your mind? A. Yes, sir.

Q. Do you make as many seconds as were made with the old hand dredge?

A. Yes, sir; we do it purposely because we only make seconds when we are called on to do so.

Q. You make them now deliberately whereas before you did not? A. Yes.

Q. You can make a better product with the pneumatic than with the old hand process, generally speaking?

4 A. Yes.

Q. Is the product made by the pneumatic dredger better as a whole than that made by the old fashioned hand process?

A. We consider it in its general application better than any of the old hand processes that we know of.

Q. Is it not a fact that you make more small ware at night than you do in the day time?

A. That would depend upon whether we were running full, Mr. Honeyman.

Q. For the last couple of months you had a strike at the factory? A. Yes, sir. 1

Q. Is that why you only run two furnaces?

A. Sometimes we run two and sometimes one and sometimes three. It depends on the foundry.

Q. And the strike is limiting your product? A. Yes, sir.

Q. And has for some months done so? A. Yes, sir.

Q. For how long? A. Since February, the first part.

Q. And your economy in doing without the pneumatic dredger for the moment is based on the conditions that you were running under in the last few months? A. Yes, sir.

Q. When you are running full down there, do you use the pneumatic dredger at night? A. Yes. 2

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lefferts, do you know Mr. Varley who worked with you? A. Yes.

Q. He testified that when he was with you in 1909 during the night time you used the banjo dredge after the installation of the Arrott dredger. Does that agree with your recollection?

Mr. HONEYMAN: I object to the question. The witness knows nothing about the testimony of the gentleman named, and the witness can only answer as to his own knowledge and not in the form of corroborating the testimony of some other witness, which may or may not be correctly stated by counsel. 3

Mr. GROSVENOR: Will you read the question?

The last question was then read by the stenographer.

Mr. GROSVENOR: Let me read you Mr. Varley's testimony.

Mr. HONEYMAN: I object to that. This witness should be allowed to testify of his own knowledge and recollection and not otherwise. 4

Mr. GROSVENOR (reading): "A. When I left they were using the pneumatic in the day time and the old banjo, as they called it, at night.

Q. That was in September, 1910? A. Yes, sir.

Q. How many furnaces had they?

A. They had three when I was there.

Q. Were they running them all?

1 A. They were running them all when I left; yes, sir.

Q. I suppose at night by using the hand dredge they saved the expense of running the compressed air plant?

A. That was the idea by using that dredge at night to cut out the expense of running the plant for the enameling department."

What have you to say to that, does your recollection agree with that?

2 THE WITNESS: Was that in 1910?

Mr. GROSVENOR: Yes.

A. There might have been times when we used the banjo sieve at night in case of a break down. We always had them handy in case anything should stop on us.

Q. And you are using them today at night?

THE WITNESS: The pneumatic sieve?

Mr. GROSVENOR: The banjo sieve.

A. We do use them occasionally, yes.

Q. How active a part does Dr. Duryea take in running your plant? A. We do not see him very often down there.

3 Q. Is he advised whether you use the hand dredge or the Arrott dredger?

A. I don't suppose I ever communicated with him in detail about it.

Q. Would he know whether you used the hand dredge at night? A. I don't believe he would.

Q. He would not know, then, whether you used the Arrott dredger at night, would he?

A. I suppose that if I had reported to him that we had installed the Arrott dredger he would.

Q. His information, then, is confined to what you tell

4 him, isn't it? A. To some matters, yes.

EXAMINATION BY Mr. NOBLE:

Q. Will you explain a little more fully what you mean by saying that you make seconds by design? You mean that you make seconds when you get an order for them?

A. Yes.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWIN L. WAYMAN, a witness of competent age, heretofore produced and sworn, called by the Colwell Lead Company, testified as follows: 1

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Did you have any conversation with Dr. Duryea prior to May, 1910, concerning the Colwell Lead Company taking a license under the Arrott patent or any other patent, prior to May 1st, 1910? A. No, I don't recall any.

Q. You had met Dr. Duryea in connection with general meetings of the Association? A. Yes.

Q. But that was before you took up the question of the Arrott patent? A. Yes, sir. 2

Q. And you do not recall having any conversation with him on the subject of the Arrott or any other patents or taking a license from you or anything of that sort prior to May, 1910? A. No.

Q. Do you recall seeing him in May, 1910, and having some conversation with him? A. Yes, sir.

Q. State when you saw him?

A. I think it was early in May at the Doctor's house over in Brooklyn.

Q. Do you remember the conversation? 3

A. I came to see him with reference to having him accept a license from me under the Arrott patent. I don't recall all the conversation, but I remember the Doctor said he was not particularly interested inasmuch as he intended to sell out his business at that time.

Q. Is that all you recall of the conversation? A. Yes.

Q. Did you see him subsequently? A. Yes.

Q. At that first meeting about which you have just talked, did the Doctor say that he would take a license under the Arrott patent from you?

A. He said he was not interested at that time because he expected to dispose of his business. 4

Q. And then you saw him subsequently? A. Yes.

Q. And what took place between you at the subsequent meetings? A. He accepted the license.

Q. What did he say and what did you say as far as you recall?

A. As I remember it, he said that he did not want to get tied up in any license agreement at that time that would prevent him from meeting local competition.

Q. What did you say?

A. I got up a special letter in connection with his license agreement to cover that situation.

Q. You say the Doctor said that he did not want to take any license agreement that would interfere with his meeting local competition? A. Yes.

Q. Did you know at that time whether the business of the Colwell Lead Company was local or not?

A. Oh, yes, it is well known that it is local.

Q. What did he say to you about what he meant by this local competition, if anything?

A. Why, he said he was more particularly a jobber than a manufacturer and that his business was mostly local and that he had that in mind.

Q. Did you say anything to him about your licenses necessarily being uniform, or anything of that sort?

A. I told him I was issuing uniform licenses to all the manufacturers, but I did offer to give this amendment that was afterwards reserved in the agreement.

Q. So that he could be free in the matter of local competition? A. Yes.

Q. Did you see him at any time other than the two occasions of which you have spoken prior to beginning of this suit? A. Not that I recall; no, sir.

Q. Did you at any time prior to the beginning of this suit say anything to Dr. Duryea or Mr. Tilden about the meetings in Chicago, Pittsburgh, New York or Mt. Clemens?

A. Not that I recall; no.

Q. Do you recall any conversation on that subject at the time you were at the Doctor's house early in May, and in the subsequent interviews that you had with him in May, any conversation about these meetings?

A. No, I did not.

Q. Do you know whether or not Dr. Duryea did engage in free and open competition in New York after he had taken the license from you?

A. Yes, I had a great many complaints about it.

Q. You had a great many complaints about it? A. Yes.

Q. What was your idea in going to the Doctor to get him to take a license from you?

A. Well, I was after all the revenue that I could get, and that was why I wanted to see if the Doctor would not take a license agreement.

Q. You asked him a dollar a day for all the furnaces that he had down at Elizabeth? A. Yes, sir. 1

Mr. GROSVENOR: It is not a dollar a day. The license agreement shows that it is five dollars a day.

Mr. HONEYMAN: I have finished my examination of this witness, who has been called as a witness on behalf of the Colwell Lead Company. I desire to know if the Government now desires to cross examine Mr. Wayman as a witness for the Colwell Lead Company?

Mr. GROSVENOR: Counsel for the Government will cross examine Mr. Wayman at the close of the examination of the said witness by the other counsel for the defendants, the said examination now continuing. 2

Mr. NOBLE: I desire to say that my time for taking testimony is limited to tomorrow, and if the Government brings out any facts on cross examination which makes it necessary for me to call any other witnesses, it is necessary for me to know that now, and I cannot wait until tomorrow night or Monday when it will be beyond my power to produce additional evidence, my time being limited to to-morrow. Do you still stick to your decision, Mr. Grosvenor? 3

Mr. GROSVENOR: Counsel for the Government declines to cross examine at this time, the witness being still on the stand for the defendants.

Mr. NOBLE: I beg your pardon. I consented to have my examination interrupted at the request of Mr. Honeyman and permitted Mr. Wayman to be called as a witness for the Colwell Lead Company.

Mr. HONEYMAN: I stated to Mr. Grosvenor, I think, that I would call Mr. Wayman in New York as a witness for the Colwell Lead Company. I made that statement in Pittsburgh, and understood that was perfectly agreeable to everybody concerned, inasmuch as the time for all the defendants, and particularly the Colwell Lead Company, was limited to this week. 4

Mr. GROSVENOR: Counsel for the Government made no objection to the examination and says that we should now proceed.

Mr. Honeyman: Counsel will assume that the Government waives its right of cross examination.

1 Mr. NOBLE: Counsel for the witness and the other defendants and witnesses will not have his examination interrupted at a future time for cross examination by the Government of a witness for the Colwell Lead Company.

EDWIN L. WAYMAN, resumed the stand for further examination by Mr. Noble, and testified as follows:

EXAMINATION BY Mr. NOBLE:

2 Q. You stated in your examination yesterday, Mr. Wayman, that, at the time that you left Detroit, or rather at the time you applied for the position as Commissioner of the Sanitary Enameled Ware Association, you had in view the purchase or acquisition of the Arrott patent. Why did you want to buy the Arrott patent? What was your purpose? What was your plan?

A. Well, when I was with the Seamless Steel Bathtub Company I fully realized the value of the Arrott patent, and from my talks with the other manufacturers I knew that they did also, and I knew that if any one could pur-
3 chase or get control of that patent they would have the key of the situation to the enameling business and could make a lot of money out of it.

Q. Now, did you pursue the purpose which you have just described? A. Yes, sir.

Q. Have you made money or a great deal of money out of the acquisition of the Arrott and the other patents?

A. Well, I don't know how much I have made or will make. I had hoped to make considerable; just what I will make I don't know, in view of all the circumstances.

Q. Have you shared any portion of the money that you
4 have made or received with any one else? A. No, sir.

Q. Did you have any agreement of any kind with any one at any time that if you made any money or profit out of the exploitation of the Arrott and these other patents you would share the profit or money coming to you with them? A. No, sir; absolutely not.

Q. Were you ever asked to make such an agreement?

A. No, sir.

Q. Were any of the steps that you took in the acquisition of the Arrott, the Dithridge and the Lindsay patents

and the licenses which you subsequently granted under them, undertaken for the benefit of any one other than yourself? A. No, sir. 1

Q. Was there any agreement between you and the Standard Sanitary Manufacturing Company or the L. Wolff Manufacturing Company or the J. L. Mott Company relative to the options which you obtained on these patents or the assignments which you later obtained on these patents, other than that which is expressed, namely, the agreement to assign and the assignment itself? A. No, sir.

Q. This instrument expresses the entire understanding between you? A. Absolutely.

Q. After you had obtained the option on these patents, did you take up the question of getting manufacturers of sanitary enameled iron ware to accept licenses from you? 2

A. I did.

Q. And when did you begin your efforts, immediately after December 28? A. Yes.

Q. Did you take up the question of trying to get the Union Sanitary Manufacturing Company to take a license from you? A. Yes, sir.

Q. Under the Arrott and these other patents?

A. Yes, sir.

Q. What did they say about taking a license under the Arrott patent? 3

A. Mr. Gates said that he would be willing to take a license under the Arrott patent. He said they had been using it for several years and had received several notices from the Standard Sanitary Manufacturing Company to discontinue, and he expected to hear from them at any minute.

Mr. GROSVENOR: I object to this as hearsay. Of course, the statement of Mr. Gates is not proper evidence as to whether or not he had received such notices and for that reason the question is objected to. 4

BY MR. NOBLE:

Q. Did he assign as a reason, among others, for his willingness to take a license under the Arrott patent, the fact that they had been using it and that the Standard Sanitary Manufacturing Company had warned them to desist?

A. Yes, he expected to get into trouble at any minute about it.

Mr. GROSVENOR: I note the same objection.

Q. What do you mean by "he expected to get into trouble?" A. Why, that his company would be sued.

Q. Mr. Gates had what relationship to the Union Sanitary Manufacturing Company? A. He is general manager.

Q. And did you afterwards grant a license to that company? A. Yes, sir.

Q. Did you take up the question of granting a license under the Arrott and the other patents mentioned with the National Sanitary Manufacturing Company? A. Yes, sir.

Q. What did they say about this Arrott and the other patents? A. Mr. Borden told me—

Mr. GROSVENOR: I object to this as hearsay.

A. (Continuing): Mr. Borden told me he had received several notices from the Standard Sanitary Manufacturing Company with reference to discontinuing the use of the Arrott dredger. He said that he had sort of been bluffing the matter off, but he knew that he was infringing and he would be willing to take a license.

Mr. GROSVENOR: Counsel objects to this line of questioning as being manifestly improper, for the reason that it violates the rules against hearsay, and suggests that the proper way to prove these notices is to produce the correspondence either from the Standard Sanitary Manufacturing Company or from these companies to whom it was addressed.

By Mr. NOBLE:

Q. Did Mr. Borden assign to you, in your conferences with him, the statements you have just related as his reasons, among others, for his willingness to take a license under the Arrott patent? A. Yes, sir; he did.

Q. What relationship does Mr. Borden bear to the National Sanitary Manufacturing Company?

A. He is president.

Q. Did you afterwards grant a license under these patents to the National Sanitary Manufacturing Company?

A. Yes, sir.

Q. Did you take up the question of granting licenses or of procuring the McCrum-Howell Company to take a license from you under the Arrott and these other patents? A. Yes.

Q. I mean by these other patents the Dithridge and Lindsay patents? A. Yes, sir.

Q. What did they say about taking the licenses under these patents? 1

A. Mr. McCrum said that he would be willing to take a license, and he subsequently told me that if it was necessary to either do without it or have it, he would rather pay the full $5 a day if he could not get it for $1 a day net. That is what he thought of the patent.

Q. Had they been infringing before your talk with them?

A. Yes, sir.

Mr. GROSVENOR: I object to the question unless it is shown that the witness has some personal knowledge indicating his capacity to answer that question. 2

Q. They told you they had been infringing, did they?

Objected to as hearsay.

A. Yes, sir.

Q. Those conversations took place with Mr. McCrum?

A. Yes, sir.

Q. And those were among the reasons which he assigned to you for being willing to take a license under the Arrott and other patents? A. Yes, sir.

Q. What relationship does Mr. McCrum bear to the McCrum-Howell Company? A. President. 3

Q. Did you take up the question of procuring the Weiskittel Company of Baltimore to take a license from you under the Arrott, the Dithridge and the Lindsay patents?

A. Yes, sir.

Q. And what did they say about taking a license under those patents?

A. My recollection is that Mr. Weiskittel told me that they had had the equipment down there for some time but did not use it after they got notice to discontinue its use from the Standard Sanitary Manufacturing Company. 4

Q. The equipment for the Arrott patent, do you mean?

A. Yes, sir.

Mr. GROSVENOR: Note that it is understood that all this line of testimony is objected to as violating the rules of hearsay.

Q. Did the Weiskittel Company thereafter take a license from you? A. Yes, sir.

Q. And did Mr. Weiskittel assign in this conversation

which you have related as his reason for taking a license under the Arrott patent, that he had discontinued its use after having gotten the notice from the Standard Company to quit using it?

A. I don't know if they had been using it or not, but they had the equipment down there.

Q. Did they afterwards take a license from you under these patents? A. Yes, sir.

Q. Who spoke to you about these patents and these licenses? A. Mr. Anton Weiskittel.

Q. What relationship does he bear to the Weiskittel Company? A. I think he is president.

Q. Did you take up the question of granting a license or procuring the Wheeling Enameled Iron Company to take a license from you? A. Yes, sir; I saw Mr. Wright.

Q. Who is Mr. Wright? A. He is the president.

Q. And what did he say to you about taking a license under the Arrott, the Lindsay and the Dithridge patents?

A. I don't recall whether he had been using it or not. He did not say. But he was very glad to get a license. I imagine he had not been using it.

Q. Did you thereafter grant to him a license under the Arrott, the Dithridge and the Lindsay patents? A. Yes, sir.

Q. And did you take up with the Wolff Company the question of taking a license under the Arrott, the Dithridge and the Lindsay patents? A. Yes, sir.

Q. What did they say with respect to taking a license from you under the Arrott patent?

A. Mr. Clifford told me that they had had some trouble in the past with the Standard Sanitary Manufacturing Company over the Arrott patent and that they had discontinued—

Q. Discontinued what?

A. Discontinued using the Arrott patent, and they had made a settlement and he was using this electric dredger of his own.

Q. Which is known as the Lindsay patent?

A. Yes, and had taken the matter up with his attorneys and was advised that he was undoubtedly infringing the Arrott patent, as it was very broad—

Mr. GROSVENOR: Note the same objection as above stated.

BY MR. NOBLE: 1

Q. Did he assign these facts which you have just related, as one of his reasons, among others, for being willing to accept a license under the Arrott patent? A. Yes, sir.

Q. Did you thereafter grant his company a license under the Arrott patent? A. I did.

Q. That is the L. Wolff Manufacturing Company of Chicago? A. Yes.

Q. Did you take up the question with the J. L. Mott Company of taking a license under the Arrott patent?

A. Yes, sir. 2

Q. What did they say about taking a license from you under the Arrott patent?

A. Mr. Hammann said at one time when I talked to him when I first heard of his patent, that is the application for the patent, that he had in at the time—

Q. Known as?

A. The Dithridge patent, that he thought it was a good patent; but I called his attention to the fact that any process that was automatic infringed the Arrott patent, and he thought that was a good way of getting out of the difficulty that he might run into.

Q. That he might run into? 3

A. Yes, if he kept on using the process which he was using then.

Q. And which was known as the Dithridge invention?

A. Yes, sir.

Q. And that is one of the reasons he assigned to you for taking a license under the Arrott patent? A. Yes, sir.

Q. Did you thereafter grant the J. L. Mott Company a license under the Arrott patent? A. Yes, sir.

Q. Did you take up the question of granting a license under the Arrott, Lindsay or the Dithridge patents with the Cahill Iron Works of Chattanooga, Tennessee? A. Yes, sir. 4

Q. With whom did you conduct your negotiations?

A. Mr. Caldwell.

Q. What relationship does he bear to that company?

A. He is president of the company.

Q. And what did he say about taking a license under the Arrott and the other patents from you?

A. Well, the first time that I saw him with reference to the matter I did not obtain much satisfaction from him. The

1 second time I saw him I went down to look at an electric dredger that he had, and when I saw it I told him that he was undoubtedly going to infringe the Arrott patent with it, and that he would be subject to a suit for infringement. I afterwards bought that patent, or rather the application for the patent. The patent was not issued.

Q. Did you grant to the Cahill Iron Works a license under the Arrott patent? A. Yes.

Q. And the circumstances which you just related were among the reasons assigned to you for taking a license under the Arrott patent?

2 A. Yes, sir; Mr. Caldwell told me that.

Q. Did you take up the question of asking the Kerner Manufacturing Company to take a license from you under the Arrott, the Dithridge and the Lindsay patents?

A. Yes, but I do not recall what my conversations were with them.

Q. Did they subsequently take a license from you?

A. Yes.

Q. Did you take up the question of granting a license to the Blairsville Enameled Ware Company of Blairsville, Pennsylvania? A. Yes, I saw Mr. Shipman.

3 Q. What relationship does Mr. Shipman bear to that company? A. Secretary and treasurer, I think.

Q. What did he say about taking a license under the Arrott patent?

A. He said they had been using it in the past, but had discontinued it. He was working on some automatic device of their own that they had applied to patent attorneys for a patent on, and he was very much pleased with it. I told him that anything that was automatic was an infringement on the Arrott patent. He came to no different conclusion, though, as to taking a license agreement.

4 Mr. GROSVENOR: Note the same objection to all of that testimony.

Q. Did you take up the question with the McVay-Walker Company? A. Yes, sir.

Q. And with whom did you have your conversations?

A. Mr. Alex. Walker.

Q. Did they take a license under the Arrott patent?

A. Yes, I had been in Mr. Walker's place some time in 1908, and I knew he was using the Arrott dredge, and I told

him he would undoubtedly save himself some trouble by executing a license agreement with me under those patents. 1

Q. And he admitted to you that the fact that he was infringing the Arrott dredger was among the reasons for his taking a license from you? A. Yes.

Q. Which he assigned to you? A. Oh, yes.

Q. How about the Clymer Manufacturing Company, did you take up the question with them?

A. I don't recall talking to them. It is quite possible that I did, but I don't recall what I may have said to them.

Q. Did they ever take a license from you? A. No.

Q. Did you take up the question of granting a license to the Barnes Manufacturing Company, under the Arrott patent? A. Yes, sir. 2

Q. Did they subsequently take a license from you?

A. Yes.

Q. I have inquired about these various companies to whom you granted licenses; now I would like to ask you this question: Did you ever decline or refuse to give a license to any of the manufacturers of sanitary enameled iron ware under these patents upon similar terms or equally favorable terms as those you granted to other persons? A. No, sir.

Q. And you offered licenses under your patents to all the manufacturers upon substantially the same terms? 3

A. Yes, sir.

Q. And 16 manufacturers accepted licenses from you, is that correct? A. Yes.

Q. Being the defendants named in this suit? A. Yes.

Q. And you have described generally your negotiations with them in the testimony which you have given?

A. Yes, sir.

Q. Do you know how many furnaces there were in the factories of the manufacturers to whom you granted licenses? A. 195. 4

Q. Do you know how many furnaces there were in the factories of the manufacturers of sanitary enameled iron ware who did not take licenses from you?

A. Approximately 55, as near as I can find out.

Q. That makes 250 altogether. Now, have you any means of knowing what percentage of the trade in sanitary enameled iron ware the manufacturers to whom you granted licenses do or had? A. No.

Q. Have you ever known at any time? A. No, sir.

1 Q. Just tell me what your information is—or rather, did these manufacturers to whom you granted licenses make reports to you of the number of furnaces they had in operation.

A. Yes, sir.

Q. Will you please state to me how many furnaces there were in operation in the factories of those manufacturers to whom you granted licenses?

A. Well, taking into consideration the reports I have that are complete, the average number of furnaces operated was about 70 per cent.

Q. That is to say that instead of operating 195 they would
2 be operating about 136, is that right? A. Yes.

Q. Have you taken the trouble to keep yourself informed as to the business of the manufacturers who did not take the licenses from you?

A. In general, yes. Mr. Kelly testified that he was running full, and so did Mr. Kohler, and from the information I received from the other places, they were about in the same position; that is, all the unlicensed furnaces.

Q. How many furnaces are there in Mr. Kelly's factory?

A. Twelve, I believe.

Q. And in Mr. Kohler's? A. I understand there are 24.

3 Q. Assuming that your information that the other factories were running full is substantially correct, and taking the output of those furnaces and the furnaces of the licensed manufacturers as representing the total output of sanitary enameled iron ware, what would be the percentage of the output of the licensed manufacturers compared with the non-licensed manufacturers, I mean as compared to the aggregate?

Mr. GROSVENOR: I object to that question, as the witness has only testified as to his knowledge as to two factories, Kelly's and Kohler's making 36 fur-
4 naces. He has shown no grounds for the knowledge of or information respecting the other manufacturers.

A. On the basis of the actual furnaces in operation, the licensed manufacturers were doing about 60 per cent. of the business as against 40 per cent. of the unlicensed manufacturers.

Q. Does the number of furnaces operated enable you in any way to determine the volume of business done by the manufacturers? A. No, no.

Q. So that when you speak of these percentages you don't know whether they represent the percentages in volume of business or dollars and cents? A. No. 1

Q. Was there any way in which any of the licensees under your licenses could know or ascertain through you or through those licenses in any way what the output was of any other of the licensed manufacturers? A. No, sir.

Q. What was the information that you gave to the various manufacturers in connection with the number of furnaces operated or the output of the various manufacturers?

A. I simply sent them a statement showing the total number of furnaces and also approximately what they would equal in furnace days. Then I gave them the per cent. of their operation as compared with the per cent. of the total operation. It was a simple matter of information. There was no way in which I or they could tell what that would amount to in dollars and cents. 2

Q. Could they, from that data you gave them, figure it out? A. No, sir.

Q. And the data which you did give them was sent to them subsequent to the period which those reports covered, was it not? A. Yes.

Q. The Government alleges that the manufacturers to whom you did grant licenses controlled 85 per cent. of the trade in sanitary enameled iron ware; is that correct? 3

A. No, sir.

Q. In one of the resolutions which were adopted at the Hotel Astor on the 29th or 30th of March, there was something said about 85 per cent.?

A. Well, at that time I did not have the correct number of furnaces.

Q. So that those statements about the percentages are inaccurate? A. Yes, sir.

Q. Is the statement which you have given this morning as nearly an accurate statement as you can make of the furnace capacity of the manufacturers whom you licensed and those who did not take licenses from you? 4

A. Yes, I think that is a very fair comparison and about correct.

Q. But it does not represent the volume of business or the dollars and cents in business? A. No, sir.

Q. Aside from the manufacturers of sanitary enameled iron ware, to whom you granted licenses, what other manu-

1 facturers of sanitary enameled iron ware are there in the United States of whom you know?

A. The Blairsville Enameled Ware Company, of Blairsville, Pennsylvania; the Clymer Manufacturing Company, Indiana, Pennsylvania; Louis Lipp Company, Cincinnati, Ohio; the Iron City Sanitary Manufacturing Company of Pittsburgh; J. M. Kohler Sons Company, Sheboygan, Wisconsin; the Washington Iron Works of Los Angeles, Cal.; Volrath & Sons Company, Sheboygan; the Jones-Holloware Company, Baltimore; there is some concern in Columbus, I think by the name of Pheil.

2 Q. In calculating the percentages of the furnaces you assume that all furnaces are of equal capacity, do you not?

A. Yes.

Q. I call your attention to paragraph 4 of Petitioner's Exhibit No. 3 and ask you what was your purpose in that provision?

A. Well, I thought I would get up an outline of the prices and then call a committee of the manufacturers together and get their ideas and suggestions and work out the details myself.

Q. This Petitioner's Exhibit No. 3 was not intended to
3 be a license agreement at all?

A. No, that is simply a memorandum of agreement to enter into a license agreement.

Q. So that in inserting paragraph No. 4 your purpose was, if I understand you, to work out the prices, go over the result of your work with some manufacturers so as to check up whether or not you had made correct calculations as to cost and so on before you finally worked them out in final form; is that correct or substantially correct?

A. Well, there was a lot of work to be done on which I wished to get their assistance in grouping material and so
4 forth with regard to sizes of goods, and it was necessary and material that I consult with them and get their suggestions.

Q. And that was the purpose for which you put this provision in? A. Yes.

Q. In the objects of the Sanitary Enameled Ware Association it is provided, as stated in Defendants' Exhibit No. 22, paragraph 6 of the Objects of the Association": "The Association is not formed to control or regulate prices of goods manufactured by its members." After you became Commissioner was there ever any action taken by the Asso-

ciation or its executive committee to regulate prices or to control prices? A. No, sir. 1

Q. Upon direct examination you were asked some questions by the Government as to the minutes of the meetings of February 1, 1910; were those minutes ever submitted to a subsequent meeting of the Association or of its executive committee? A. No, sir.

Q. Mr. Wayman, on the direct examination by Mr. Grosvenor, as counsel for the Government, Exhibit for Identification No. 4, offered by the counsel for the defendant, being a letter dated April 29, 1910, and addressed to Mr. William A. Myler, Pittsburgh, and signed by Mr. Eugene H. Sloman, 2 was marked. I now show you that letter and ask you if you know what it is? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. Well, please state what it is.

A. It is a letter addressed by Mr. Eugene H. Sloman to Mr. W. A. Myler, Pittsburgh.

Q. What else is it? Did you deliver that letter to Mr. Myler? A. Yes, sir.

Mr. NOBLE: I wish to offer that in evidence as Defendants' Exhibit No. 23 and have it read on the record in connection with the testimony given by Mr. 3 Wayman on his direct examination.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 23."

Mr. NOBLE: This letter reads as follows:

"Detroit, Mich., April 29, 1910.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"My dear Sir.

"Mr. E. L. Wayman was in to see about a subject 4 we had often discussed while associated with the Seamless Steel Bath Tub Company, namely all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware. As I understand it he has negotiated far enough along so that now it becomes a question of money to carry out his plan.

"It is my disposition to help him both financially and otherwise as our relations have been such that a

brotherly feeling exists between us. On account of my experience and negotiations in Seamless and real estate I have used up the limit of my credit at our local bank till I begin to realize on properties and securities I own. Consequently I cannot borrow on collateral even which ordinarily they would accept from me or any of their customers. Therefore in order to assist Mr. Wayman I would like to deposit with you certain stock collateral, namely Universal Electric Welding Co. of New York, certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75 per share and will increase as Mr. Wayman is aware of on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises you will be doing him a favor without risk to yourself which I will very much appreciate and hope to be able to reciprocate at some future period.

"Awaiting your decision,

"Believe me, Most sincerely,

"(Signed) Eugene H. Sloman."

BY MR. NOBLE:

Q. I now show you a receipt dated April 29, 1910, and marked "Exhibit No. 5 for identification offered by counsel for the defendants" and signed by E. L. Wayman and ask what that is?

A. That is a letter addressed by me to Mr. Sloman acknowledging receipt of 300 shares of the Universal Electric Welding Company's stock, for the purpose of negotiating a loan for the purchase of the several enameling patents referred to.

MR. NOBLE: I offer that in evidence as Defendants' Exhibit No. 24.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 24." 1

Mr. NOBLE: This receipt reads as follows:

"Detroit, Mich., April 29th, 1910.

"Received of Eugene H. Sloman Certificate No. 1030 for 300 shares of Universal Electric Welding Co.'s stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date. 2

"(Signed) E. L. Wayman."

BY MR. NOBLE:

Q. I now call your attention to the endorsement on the back of this Exhibit No. 24, being marked "Defendants' Exhibit No. 6" for Identification, the endorsement being dated April 29, 1910, and signed by E. L. Wayman and ask you what that is?

A. That is an agreement that the value of the stock that I borrowed was $75 a share and I obligated myself for that amount if not returned in seven months. 3

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 25.

Endorsement referred to was then marked and filed as "Defendants' Exhibit No. 25."

Mr. NOBLE: This endorsement reads as follows:

"April 29th, 1910.

"I hereby agree and consent that the value at present of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date. 4

"(Signed) E. L. Wayman."

BY MR. NOBLE:

Q. That is the stock which you borrowed from Mr. Sloman and known as the—

A. The Universal Electric Welding Company's stock.

Q. What did you do with that stock?

A. I gave it to Mr. Myler of the Standard Sanitary Manufacturing Company.

Q. And he in exchange for that gave you what?

A. Loaned me 100 shares of the Standard Sanitary Manufacturing Company's stock.

Q. And it was on those shares of Standard Sanitary Manufacturing Company's stock that you obtained your loan at the bank in Detroit about which you have previously testified, is that correct? A. Yes, sir.

Q. I show you now Exhibit No. 7 for identification offered by counsel for the defendant, being a letter dated May 2, 1910, at Pittsburgh, and addressed to Mr. Sloman and signed by Mr. Myler. What is that?

A. That is a letter from Mr. Myler to Mr. Sloman acknowledging Mr. Sloman's letter of April 29, together with certificate of the 300 shares of the Universal Electric Welding Company's stock.

Q. Was that letter delivered by you to Mr. Sloman or sent by you to Mr. Sloman or by Mr. Myler to Mr. Sloman?

A. By Mr. Myler to Mr. Sloman.

Q. You saw that letter written, though, didn't you?

A. Yes, sir.

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 26.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 26."

Mr. NOBLE: This letter reads as follows:

"STANDARD SANITARY MFG. CO.
"General Offices
Pittsburgh, U. S. A., May 2, 1910.

"Mr. Eugene H. Sloman,
Detroit, Mich.

"Dear Sir:

"Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satisfactory as per your letter.

"Yours truly,
"(Signed) W. A. Myler."

BY MR. NOBLE: 1

Q. I now show you a letter dated August 20, 1910, addressed to Mr. Myler at Pittsburgh, and signed by E. L. Wayman, and I ask you what that is?

A. That is a letter written by me to Mr. Myler with reference to the expressing of these 100 shares of Standard Sanitary stock upon which I negotiated the loans at Detroit and asking him to return to Mr. Sloman the stock of the Universal Electric Welding Company.

MR. NOBLE: I offer that letter in evidence as Defendants' Exhibit No. 27. 2

Letter referred to was then marked and filed as "Defendants' Exhibit No. 27."

MR. NOBLE: This letter reads:

"Detroit, Mich.,
Aug. 20th, 1910.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"Dear Mr. Myler:

"Enclosed herewith I am enclosing to you Certificate D 230 for 100 shares of Standard Sanitary Mfg. Co.'s stock upon which my loan here in Detroit was negotiated, which I have paid today in full, Mr. Sloman being with me and he requests at your early convenience that you return to him the certificate for 300 shares of the Universal Electric Welding Co.'s stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own. With kindest regards, I am 3

"Yours truly,
"(Signed) E. L. Wayman. 4

"P. S. For safety I am sending this by express."

BY MR. NOBLE:

Q. Was that Universal Electric Welding Company's stock returned by Mr. Myler to Mr. Sloman? A. Yes, sir.

Q. Do you know whether or not that stock has since been sold? A. Yes, sir.

Q. At how much? A. $10,000.

Q. How much would that be a share?

A. $33 1/3 a share, but that was sold at a sacrifice, as I understand.

Q. But the 300 shares of the Universal Electric Welding Company's stock which you gave to Mr. Myler in exchange for his loan to you of the 100 shares of Standard Sanitary stock have since sold for $10,000?

A. Yes, sir.

Q. Mr. Wayman, it is alleged by the Government that you and the other defendants in this suit, or some of them, entered into an agreement to eliminate and suppress competition in sanitary enameled iron ware. I now ask you, did you ever have any agreement or understanding with any of these defendants to restrict trade or to lessen the sale or trade in sanitary enameled iron ware? A. No, sir.

Q. Did they ever have any agreement among themselves to that effect of which you have any knowledge or to which you were a party? A. No, sir.

Q. You did grant to these various defendants licenses under your patents, did you not? A. Yes, sir.

Q. And in connection with the granting of those licenses did you attempt to work out a plan whereby the freight rates would be equalized? A. Yes.

Q. What was your purpose in doing that?

A. To enable all the manufacturers to compete in any part of the country.

Q. Did it have that effect?

A. Yes, sir; manufacturers got into territory that they never could before.

Q. How about the jobbers?

A. The jobbers could sell at a profit in any part of the country.

Q. Could a jobber in any part of the country sell in any other part of the country? A. Yes, sir.

Q. In competition with the jobber who was in that part of the country?

A. Yes, and in competition with the manufacturer.

Q. Do you know of instances where jobbers did extend their business into other parts of the country where they had not been in business before?

A. Well, I cannot recall any particular instance now, but I have talked with jobbers who have stated that—

Mr. GROSVENOR: I object to that as hearsay. 1

Mr. NOBLE: Go ahead.

A. (Continuing): That they could do business in any part of the country.

Q. And did they regard that as an advantage to them?

A. Certainly.

Q. Now, it is alleged by the Government that the discounts allowed to jobbers under these licenses that you granted were arrived at by agreements among the defendants. I ask you is that true? A. No, sir.

Q. Were there ever any agreements among the defendants, that is, the parties to this suit, whereby the discounts 2 allowed to jobbers were stipulated or agreed upon?

A. No, sir.

Q. How were the discounts and preferentials and rebates in your price list established, and by whom?

A. They were established by myself after consultation with some of the manufacturers.

Q. Did the manufacturers fix them? A. No, sir.

Q. Who did fix them? A. I did.

Q. Were they fixed as a result of the manufacturers' judgment, or your judgment? A. My judgment.

Q. You were asked some questions upon your direct ex- 3 amination by the Government relative to the provisions in the price list as to boxing and crating. What was your purpose in making the provisions which were made relative to boxing and crating?

A. Why, I required that all enameled ware be either boxed or crated, so as to insure its safe delivery.

Q. Why was that an advantage to you, if any?

A. Well, it protected the goods made under my patents and extended their use by arriving safely at their destination, and it did away with a great deal of trouble that had theretofore existed. Because, in some instances the manu- 4 facturers had shipped goods nested and without any cratings whatever.

Q. What is nested? A. Nested together.

Q. That is, one bathtub set inside the other?

A. Yes, sir; but that applied more to small ware than to bathtubs.

Q. Will you tell what nesting means?

A. One piece packed into another with straw between them.

Q. Were goods shipped in that way injured?

A. Yes, sir; and there was a great deal of complaint about it.

Q. Was there any tendency on the part of the straw to mark them or discoler the enamel?

A. Well, I remember when I was with the Seamless Steel Bathtub Company the tubs we had outside with the straw between them and the crates becoming very much discolored; that is, the acid in the straw got into the enamel and it was impossible to get it out, and I imagine that goods shipped in straw or simply nested in straw may have been damaged by the weather.

Q. These goods that were outside were some that were exposed to the weather in some way? A. Yes, in shipping.

Examination Suspended.

At this point a recess was taken for one hour.

After Recess.

EDWIN L. WAYMAN, resumed the stand and testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. Who is Mr. Gregg?

A. He is the advertising manager of the Standard Sanitary Manufacturing Company.

Q. Does he attend to their printing of matters that they want to send out to their customers? A. Yes, sir.

Q. Mr. Wayman, what was the object or purpose that you had in view in inserting paragraph 10 in the Jobbers' License Agreement, which is similar to Petitioner's Exhibit No. 11?

A. Why, that was to promote the manufacture and the sale of licensed ware under my patents.

Q. Will you please explain how that would increase the sale of ware manufactured under your patents?

A. Well, by encouraging the jobber to handle as much ware as possible, I would naturally get larger royalties through increased output of the manufacturers.

Q. Would it have any effect also upon improving the standing of sanitary enameled iron ware in the trade? 1

A. Yes, I think it would. The fact that only first grade ware was sold would of course elevate the general business conditions among the jobbers.

Q. And as I understood your testimony there had grown up a situation where there was very strong competition with other lines of ware?

A. Oh, yes, such as vitreous chinaware and solid porcelain.

Q. And was this provision put in to increase and make a staple product on the market the sanitary enameled iron ware? 2

A. Yes, sir; and to force a decrease as far as possible in the sale of solid porcelain and vitreous china.

Q. Now, it is alleged in the Government's Petition that no defendant will sell to a jobber not recognized by all the defendants as a legitimate jobber. Let me give you the exact reference: The Government alleges that the defendants will not sell their products to any person or company who is not recognized by all the defendants as a jobber and whom all the defendants consider what is denominated here as a legitimate jobber; is that true? 3

A. No, sir; the manufacturers were permitted to make contracts or license agreements with any person that they wished to sell to who was a jobber.

Q. Was there any agreement by any of the defendants that they would not sell to any person or company who was not recognized by all the defendants as a jobber?

A. No, sir.

Q. Was there any agreement that they would not sell to any person except a person recognized, as it is denominated here, as a "legitimate jobber?" A. No, sir.

Q. Did you attempt to pass upon who jobbers were? 4

A. No, sir.

Q. Was there any standard stipulated by you by which it should be determined what a jobber was? A. No, sir.

Q. So far as any individual licensee was concerned, was he permitted to pick out who his own jobbers were to be under his license agreement? A. Absolutely.

Q. Did you so state to the licensees? A. Yes, sir.

Q. There was introduced in evidence by the Government an exhibit referred to as the "Blue Book" which was said

1 to contain a list of jobbers, constituting a part of what was known as Petitioner's Exhibit No. 30. I show you a copy of that exhibit, which is found in the record, and ask you whether there was any understanding between you and the manufacturers that they should sell only to jobbers whose names appear in that book? A. No, sir.

Q. Was there any understanding among the defendants other than yourself that they would not sell to any jobber unless his name was mentioned in that exhibit?

A. No, sir; that is simply the names of the principal jobbers in this country. The license agreements were not
2 only executed with the people in this book, but with others.

Mr. GROSVENOR: That Blue Book does not comprise the entire Exhibit No. 30. I would not like to have the questions addressed to the witness give that impression. Exhibit No. 30 consists of the Blue Book referred to and a typewritten sheet attached thereto.

BY MR. NOBLE:

Q. In replying to my last questions did you understand that Exhibit No. 30, about which I inquired, consisted of the names included in what was called the "Blue Book"
3 and other names of jobbers not in the "Blue Book?"

A. Yes, sir.

Q. Now, the Government alleges that all purchasers and users of sanitary enameled iron ware are obliged to pay the same prices which have been and are now fixed by the defendants by mutual agreement and without competition with each other. I ask you whether that is true?

A. No, sir.

Q. Was there ever any agreement, mutual or otherwise, between the defendants to name or fix the prices at which the goods should be sold to the users or purchasers?

4 A. No, sir.

Q. As a matter of fact, did your license agreement or jobber's license agreement or price list have anything to do with the prices which the users should pay for the articles manufactured under your patents?

A. No, that simply covered the price from the manufacturer to the jobber and from the jobber to the plumber. The plumber made any price that he saw fit to the consumer.

Q. Was there competition between the manufacturers of

sanitary enameled iron ware who had licenses from you among themselves in their sales to the jobbers? 1

A. Yes, the license agreements show that through the differentials, and also from the fact that all of the jobbers could ship their goods into any particular territory.

Q. So that if I understand you, the manufacturers all competed with each other in the manner you have described, through every part of the United States. A. Yes, sir.

Q. Now, was there any competition between jobbers under the license and jobber's license agreements and price lists which you established under your patents?

A. Well, not on the enameled ware itself, but there was competition on the rest of the articles which went with the enameled ware, which, in a great many territories, were sold at cost or below cost. 2

Q. You mean such as the fittings which go to make up the completed article?

A. Such as supply pipes and bath cocks and waste pipes, etc.

Q. Was there competition among the jobbers in all the territory throughout the United States even on the Sanitary Enameled Iron Ware?

A. Yes, any jobber in any part of the country could compete with any jobber in any other part of the country. 3

Q. In the manner you have described jobbers competed with each other, and although they were selling your sanitary enameled iron ware, each man might compete for the same job and offer different prices? A. Yes, sir.

Q. Now, there is something said in the contracts about lump sum bids. Just explain your purpose in putting that in and its effect?

A. Well, by the provision of lump sum bids was meant that the prices established on the enameled ware must be shown separately from those of the fittings. In other words, the enameled ware and the fittings should not all go in under any one lump sum price. 4

Q. You did not attempt to exercise any control over the fittings, did you?

A. No, all I controlled was the enameled ware.

Q. Manufactured under your patents? A. Yes, sir.

Q. Was there any provision at all as to the price to be paid by the ultimate consumer under your contracts?

A. No, sir.

1 Q. As a matter of fact, do you know whether or not the price paid by the ultimate consumer varied between different plumbers with whom they dealt?

A. Well, I should say they did, because I know of no price that the plumber was obliged to charge to the consumer.

Q. Now, the Government alleges that you and the other defendants devised means by which each of the defendants was advised of the amount of the output of each of the other defendants, in order that they could thereby limit and restrict their respective outputs, as was advisable?

2 A. There was no such agreement. I was interested in seeing each factory make as much as they could.

Q. Did your royalty depend upon the number of furnaces in operation? A. Yes, sir.

Q. Well, was there any agreement among the defendants to limit and restrict their respective outputs? A. No, sir.

Q. At any time during the period between June 1 and December 31, 1910, was there any agreement among the defendants, or between you and any of the defendants, to restrict or limit their output in any way? A. No, sir.

Q. Did anybody ever suggest doing it? A. No, sir.

3 Q. Did you in any way advise the defendants at any time, or any of them, what any other defendant had produced? A. No, sir.

Q. Did you know yourself? A. No, sir.

Q. You only knew the number of furnaces in operation from the reports sent to you? A. That is all.

Q. And you did not know what their output was in pieces or in dollars and cents, is that correct?

A. That is correct.

Q. Now, I call your attention to Petitioner's Exhibit No. 132, parts 1, 2 and 3, and ask you if you will point 4 out there what you meant by saying that you gave them simply the percentage of furnaces in operation?

A. Well, we will take as an example the first item on the list; that is the Barnes Manufacturing Company. Now, in my report to the Barnes Manufacturing Company I advised them that the average per cent. of the total operations of all the furnaces was 69 per cent.

Q. That is to say that 31 per cent. were idle?

A. Yes, sir.

Q. During the months referred to in part 1 of Exhibit No. 132? 1

A. Yes, sir. In this particular instance Barnes operated exactly the same as the average per cent., 69 per cent. Now, taking the case of the United States Sanitary Manufacturing Company; I notified them that the average operation was 69 per cent.; then that their operation was 98½ per cent. or 29½ per cent. above the average.

Q. Is that (indicating) a copy of the report which you sent, Petitioner's Exhibit No. 132?

A. That is a copy of the report that I furnished the Government. 2

Q. This is not a copy of the report, then, that you sent to the manufacturers? A. Oh, no.

Q. This is a compilation? A. Yes.

Q. Oh, I see; well, now, in the reports that you sent to the manufacturers themselves was there any statement which showed the amount of output of any of their competitors? A. No, sir.

Q. Was there any statement which showed the number of furnaces operated by their competitors? A. No, sir.

Q. And this report which you sent to them was a report compiled by you after the period—after you had received the individual reports from these manufacturers and naturally compiled for that period? A. Yes, sir. 3

Q. For the month of June when would you receive the reports of the various manufacturers?

A. Well, early in July.

Q. And how long did it take you to compile those reports and send them out to the various manufacturers?

A. Well, all the reports did not come in at the same time. I sent out the individual reports as soon as I had received all the reports from the individual companies. It is quite possible that a report covering the month of July did not go out until September. 4

Q. So was there any way in which you knew what the manufacturers were doing during the month of July in July? A. No, sir.

Q. There was no means by which you could inform the others, then? A. No, sir.

Q. Was there any arrangement between the manufacturers themselves so that they could know during any month what their competitors were doing? A. No, sir.

Q. For example, in the month of June, what per cent. of all the furnaces you had under license were in operation? A. 69 per cent.

Q. Did you ever send to any of the manufacturers a report similar to Exhibit No. 132 and its various parts? A. No, sir.

Q. Did the report which you sent to the manufacturers show the percentage of any other manufacturer than the one to whom you sent it? A. No, sir.

Q. Was there any way, so far as you know, by which it could be figured out from the data which you gave what anybody else had done during the month? A. No, sir.

Q. So that the allegation that there was any sort of means by which any of the defendants could be advised of the output of any of the others, is totally incorrect, is that true?

A. That is true.

Q. Now, there is an allegation in the petition that the defendants have divided the United States up into territorial zones, that this was done by agreement and no jobber is allowed to sell outside of his zone, and thereby the trade is restricted and the manufacturers are able to hold the jobber firmly to the agreement?

A. No, sir; that is not so; a jobber can sell in any zone in the country.

Q. Was there any agreement to divide the country up into geographical territories or zones? A. No, sir.

Q. Who did that? A. I did.

Q. And what was the purpose for that?

A. It was principally for the convenience of the jobber in knowing what the goods would cost him and at what price to sell his goods in his particular town and in adjacent territory.

Q. Could a jobber in Zone 1 purchase goods to be delivered in Zone 3 and sell them there? A. Yes, sir.

Q. And that is true of every other zone? A. Yes, sir.

Q. He could buy goods in his own zone too and ship them anywhere if he wanted to, could he not? A. Yes, sir.

Q. And he could do so at a profit? A. Yes, sir.

Q. You say it was to enable the jobber to know how much his goods cost him that you divided for convenience the country into geographical zones. Just explain what difficulty there had been previously for the jobbers to know what the goods would cost him on any given order having reference to freight rates, etc.?

A. Well, buying goods in the west and having them 1
shipped to the east there was always an uncertainty as to exactly what goods would cost delivered, that is, per piece. Take a lavatory; it would be hard to keep a record to show consistently what that lavatory would cost delivered in another town. Now, I took the principal jobbing points in the east and added certain freight additions covering freight to other points.

Q. In the country?

A. Yes. Now the cost or selling price on a five foot tub in San Francisco was simply the price f. o. b. Pittsburgh plus the freight, and in some cases less than the freight. 2

Q. And that was true generally of all the zones throughout the country? A. Yes.

Q. Now, the Government alleges that there was co-operation of the defendants in fighting other manufacturers and dealers in sanitary enameled iron ware who had not become parties to the alleged combination. Was there any combination? A. No.

Q. Of any kind? A. No, sir.

Q. Was there any co-operation in fighting the manufacturers of sanitary enameled iron ware among the defendants?

A. No, sir. 3

Q. Now, they say as one of the means to that end you were refusing to sell jobbers sanitary enameled iron ware who were buying from manufacturers who were not members of the combination. I asked you a while ago your purpose in putting in clause No. 10 of the jobber's license agreement, did I not? A. Yes.

Q. Will you please explain again, in connection with this allegation, what your purpose was?

A. That was for the purpose of encouraging the manufacturer to sell licensed ware. Now, in a great many instances I gave manufacturers permission to sell unlicensed 4
ware and I gave jobbers permission to buy ware from unlicensed manufacturers.

Q. But your purpose in putting that clause in was what?

A. To further the sale by the manufacturer of licensed ware under my patents.

Q. Was there any combination among the defendants to force other manufacturers out of business? A. No, sir.

Q. As a penalty for not coming in and taking a license from you? A. No, sir.

1 Q. The Government has alleged that you, or the defendants, have established and are enforcing a system of severe penalties which are imposed on such members of the combination as depart from the rules respecting prices and terms of sale fixed by the combination, that is to say, if any defendant sells at discounts or prices or terms of sale other than those agreed upon by all of the defendants, he is obliged to forfeit or pay a heavy penalty which is deposited in the common fund of all the defendants. Was there any system of penalties which was established by these defendants and which were to be imposed upon the members of this alleged combination?

2 A. No, sir.

Q. Was there any combination among these defendants?

A. No, sir.

Q. Did the licenses which you granted to the various licensees express the entire relationship existing between you and the several licensees? A. Yes, sir.

Q. Was there any other relationship, contract or understanding between the various licensees themselves?

A. No, sir.

Q. Or between the licensees and yourself? A. No, sir.

Q. Did you ever impose any penalties upon jobbers for
3 failure to sell at the resale prices? A. No, sir.

Q. Now, Mr. Wayman, the Government alleges that the defendants knew that the contracts—they call it a combination—which you made with these various defendants were unlawful. How many years have you been dealing with contracts under patents?

Mr. GROSVENOR: I object to that as immaterial and irrelevant and incompetent and having no bearing on the issues in this case. Furthermore, that licenses under patents are of a different character and vary from each other.

4 Mr. NOBLE: Go ahead, Mr. Wayman.

A. Well, I was with the Western Electric Company eleven years. Just how many years while I was with that company I was familiar with license agreements, I am unable to state, but for several years I was familiar with the fact that the electric appliances and apparatus were sold under these license agreements.

Q. And the various licenses which you granted to the

various manufacturers under these patents were substantially similar? A. Yes, sir. 1

Q. Had you ever heard any one suggest that the electrical agreements with which you were dealing were unlawful?

A. No, sir.

Q. Until Mr. Kohler suggested to you—as I believe you testified in your direct examination—that the plan you had in view of granting licenses under the Arrott and other patents was in conflict with the laws of Wisconsin and later suggested that it might conflict with what is known as the Sherman Anti-Trust Act, had you had anybody suggest to you that your plan was not lawful? 2

A. Not that I recall. I was always under the impression that the license agreements which I was proposing were absolutely lawful.

Q. After Mr. Kohler made that suggestion did you further consult with your counsel? A. Yes, sir.

Q. And what did they advise you?

A. They advised me that the license which I had proposed was entirely lawful, and Mr. Jackson gave me several extracts of cases which I in turn gave either to Mr. Kohler or Mr. Murphy; I don't recall which.

Q. So that at the time you granted these licenses to these various defendants did you believe that they were entirely lawful? A. Yes, sir. 3

Q. The Government alleges that these various patents were assigned to you as a ruse; that the assignments were not absolute, that they were conditional, that they were not in good faith. Is there any truth in those allegations?

A. No, sir; these patents were assigned to me in good faith. It was my own idea, and I believe it to be strictly lawful and I believed that the people who executed those agreements did also.

Q. Was there any agreement between you and the companies from whom you purchased the Arrott, the Dithridge and the Lindsay patents other than those that are expressed in writing? A. No, sir. 4

Q. How was it, Mr. Wayman, that you did not in accordance with the full period on which you had the options, buy them for that full period but only bought them for two years?

A. Well, that was as much as I could finance them for.

Q. That was the limit that you found you could finance them?

A. Yes, sir; that was all the money I could raise.

Q. Besides Mr. Sloman, did any one assist you in financing this operation? A. No, sir.

Q. Now, the Government alleges that you were selected by agreement of the defendants to act as the assignee of these patents. I think they call you an "ostensible licensor"; is there any truth in that statement?

A. No, sir; absolutely no truth in that at all.

Q. Did anybody ever suggest any such thought to you?

A. No, sir.

Q. The Government alleges also that these three patents were assigned to you for a nominal consideration and subject to reassignment as a part of this ruse or apparent or ostensible transaction. Is that true? A. No, sir.

Q. What were the circumstances under which you procured the assignments of these patents?

A. Through options and by paying for them.

Q. For whose benefit? A. Myself.

Q. You never had any agreement with any of these defendants that these patents should be assigned to you other than the individual defendants from whom you bought them, did you? A. No, sir.

Q. The Government alleges that before the assignment all the essential features of the agreements, meaning the license agreements and the jobber's license agreements and the price list, had been agreed upon by all the defendants; that they had agreed on all the principal conditions of the contract and upon the terms of the jobber's license agreements and upon the resale prices to jobbers and upon a price list; is that true?

A. No, sir; a great many changes were made, for instance, in the jobber's agreement as late as June 2.

Q. Was it true that at any time the defendants agreed upon those features mentioned in that allegation, or any of them? A. No, sir.

Q. If I understand you, you had gotten up those contracts yourself in the manner you have described? A. Yes, sir.

Q. And without any agreement between you and the defendants or among themselves; is that correct?

A. Yes, sir; the contracts were my own ideas. I made use of the best suggestions I could get from time to time, but the contract as a whole, in its principal parts was mine.

Q. And made without agreement among the defendants?

A. Yes, sir. 1

Q. Is that right? A. Yes, sir.

Q. Mr. Wayman, who called or who asked the various manufacturers to meet you in New York at the Hotel Astor on March 29 and 30? A. I did.

Q. What was your purpose in asking them to meet you?

A. To bring to a conclusion the licenses that I had submitted to them, copies of which I had forwarded to them previous to the meeting. I was anxious to get the matter in a concrete shape and concluded.

Q. Did you get the matter concluded at that meeting?

A. No, sir. 2

Q. There was a committee appointed, it was said here in evidence, at that meeting. Do you know who suggested the appointment of that committee? A. Yes, sir; I did.

Q. What was your purpose?

A. I was not making any headway—the discussions taking place in different parts of the room led me to believe that it would be almost impossible to conclude the matter there, and I asked that a committee be appointed to meet with me and conclude the license agreements.

Q. Did you thereafter, from time to time, confer with that committee? A. Yes, sir. 3

Q. There was a resolution adopted on those days spent at the Hotel Astor, in New York, calling for the levy of a special assessment equal to the amount of one-quarter's dues as then paid into the Association. What was that for, if you know?

Mr. GROSVENOR: I object to that question in view of the fact that the rest of the paragraph not read by counsel states the purpose.

A. It was for the purpose of the expenses of the committee that was appointed to conclude the negotiations with me.

Q. Upon direct examination Mr. Grosvenor inquired of you whether your salary was paid out of the quarterly assessments which were made by the Sanitary Enameled Ware Association. I ask you whether there was any portion of your salary paid out of this special assessment? 4

A. Oh, no. That was simply for the expenses of the committee.

Q. Your salary was paid out of the regular dues of the Association itself?

A. Yes, sir; I conducted this as a separate proposition.

1 Q. Did this matter have anything to do with the Association itself? A. No, sir.

Q. Referring, then, to the amount of a quarter's dues—

A. That was simply a method of calculation, that is all.

Q. State the circumstances under which you made up what you called the price list?

THE WITNESS: In what respect?

Q. How did you work out those prices?

A. Why, I took the printed prices of the various manufacturers that were in effect at that time and grouped the ma-
2 terials and articles into different classes in the shape of schedules and to the printed prices I added certain percentages so that with the discounts and maximum rebate allowed the prices equalled approximately 5 per cent. below the then printed prices.

Q. Did you do the work yourself?

A. A great deal of it. I employed some people to help me.

Q. Now, were those prices submitted to the manufacturers for their acceptance before you attached them as part of your contracts?

3 A. No, sir; the manufacturers did not know what the prices were until they received the price book. They had a general idea of what they would be, but they did not know the exact prices.

Q. The Government alleges, Mr. Wayman, that each defendant, meaning each licensee, stipulated as a condition of his accepting a license from you that all the other defendants should accept a license; is that true? A. No, sir.

Q. Did any of the defendants make such a stipulation?

A. No, sir.

Q. Did any one suggest such a stipulation? A. No, sir.

4 Q. They allege that it was a condition precedent to the Arrott, the Dithridge and the Lindsay patents being assigned to you that all of the defendants should accept a license from you. Is there any truth in that statement?

A. No.

Q. Was there any such condition precedent? A. No, sir.

Q. Was any such condition ever suggested by any of the defendants? A. No, sir.

Q. Upon direct examination counsel for the Govern-

ment asked you this question, appearing on pages 49 and 50 of the printed record, volume 1: 1

> "Q. The control of this vast business you claim to have acquired by the expenditure of how much money?"

Did you acquire any control of the business of the defendants?

> THE WITNESS: Do you mean as to output?
> Mr. NOBLE: Yes.

A. No, no. 2

Q. What control, if any, did you secure in the business of any of the defendants?

A. Simply the royalty accruing from each furnace in operation. I did not intend by that former answer that I attempted to control the quantities they might manufacture. They were privileged to manufacture as much or as little as they liked.

Q. What was your interest in the manufacture conducted by these defendants in sanitary enameled iron ware?

A. Well, I was interested in seeing them manufacture as many goods as they could, and as far as control is concerned, why I simply controlled the selling price at which they might have disposed of their goods. 3

Q. Under your patents?

A. Yes, sir; but as far as limiting or restricting the production, I did not do anything of the kind.

Q. Was it to your interest to restrict their operations in manufacture? A. No, sir.

Q. What was your interest?

A. I was interested in seeing them manufacture as much goods under my patents as they could, because that meant that much more royalty. 4

Q. The more goods they manufactured under your patents, if I understand you, the greater your royalty?

A. Yes, sir.

Q. And the more widely extended was the use of goods manufactured by your patents, is that correct? A. Yes, sir.

Q. The licensees could have stopped manufacturing entirely as far as you are concerned?

A. Yes, sir; I think one of them did.

1 Q. Or they could have manufactured ten times as much as they formerly had, as far as you were concerned?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Did you attempt to exercise any control over their output? A. No, sir.

Q. Did you attempt to exercise any control over their business of any kind or over their employees or laborers or officers, except insofar as you were interested in collecting royalties upon the furnaces they operated and seeing that the prices and quality of the goods were as you stipulated they should be in your licenses? A. No, sir.

2 Q. What do you mean by your answer, "No, sir?"

A. I mean I did not.

Mr. NOBLE: Will you read the question to him. Just elaborate your answer a little more, Mr. Wayman.

The last question was then read by the stenographer.

THE WITNESS: No, I simply attempted to enforce the license as it existed.

Q. Now, on page 133 of the printed record, volume 1, you were asked whether you drew certain checks on the bank account in Detroit at the People's State Bank, after you had secured a loan on that "electric" stock. What stock did you pledge at the bank in Detroit for the loan that you obtained?

3 A. The Standard Sanitary Manufacturing Company's stock.

Q. The "electric" stock was lodged by you with Mr. Myler as collateral, or as security for the Standard Sanitary Manufacturing Company's stock which he loaned to you, is that correct? A. Yes, sir.

Q. Now, on page 35 of the record, volume 1, Mr. Grosvenor was asking you some questions relative to Petitioner's Exhibit No. 3. He asked you this question?

4 "Isn't Exhibit 3 the earliest paper you have in the shape of a licensing agreement?

THE WITNESS: In the shape of an agreement, you mean?

Mr. GROSVENOR: Yes, in writing?

A. Yes, in writing—well, do you mean with reference to patents?

Mr. GROSVENOR: No, with reference to the licensing arrangement. 1

THE WITNESS: Yes, that is the earliest that I have retained."

I show you now Petitioner's Exhibit No. 3, which Mr. Grosvenor was then inquiring about, and I ask you if you meant to say that that was a licensing agreement?

A. No, I meant to say that that was a memorandum of agreement for the entering into of a licensing agreement. I was evidently confused as to what Mr. Grosvenor had in his mind.

Q. Again on page 71 you were asked the question, in folio 4: 2

"Q. That resolution says: 'Whereas a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade,' the license agreement referred to there, I take it, was the one about which there had been that March meeting—about March 2, I believe you said—at which you said you and Mr. Torrance were present?

"A. Yes."

I show you that Petitioner's Exhibit No. 3 and ask you if that is the paper you had in mind when you answered that question? 3

A. No, sir; this (indicating) is simply a memorandum of agreement to enter into a license agreement.

Q. Well, which one did you have in mind?

A. The one sent out before.

BY MR. HEATH:

Q. The one sent out on March 24? A. Yes.

BY MR. NOBLE:

4

Q. Meaning the proposed license agreements and proposed jobber's license agreement? A. Yes.

Q. Was that the proposition that you had, in various conferences and letters, been submitting to these various manufacturers? A. Yes, sir.

Q. Now on page 88 of the record your attention was directed to page 16 and 18 of Petitioner's Exhibit No. 41, and you were asked about the special drillings. What was your purpose in making provision for sanitary enameled

1 iron ware which might be manufactured with special drillings?

A. That is part of the fixture, or in other words it constitutes the cost of the labor entering into the fixture for that special work.

Q. And as part of the manufacture of the enameled article those drillings were made? A. Yes, sir.

Q. In other words, it constituted a special class of articles of enameled ware?

A. Yes, it constituted a sink that might have special drillings other than those regularly molded in the sink as
2 catalogued.

Q. And that added to the manufacturing cost?

A. Yes, sir.

Q. Now, in the earlier part of your testimony you spoke of talking to jobbers to try to get them to talk to those manufacturers whom you were endeavoring to get to accept licenses from you? A. Yes.

Q. Will you please explain what you meant by that?

A. Well, I talked to jobbers in Chicago and in Pittsburgh and in Niagara Falls. At the meetings up there I went up there and explained to them the different provisions of the
3 license agreements, etc., and illustrated the system of discounts, rebates, etc. Also I called attention to the fact that in the future there would not be any seconds on the market after this license agreement went into effect, and then I asked them to speak to the manufacturers as I wanted the manufacturers to feel that this was something to their interest, and I guess some of them did.

Q. And you did that for the purpose of inducing the manufacturers to take licenses from you? A. Yes, sir.

Q. On page 244 Mr. Kohler testified that in October, 1908, there was a licensing agreement spoken of at the meeting at
4 which you and various other persons were present. Do you recall what the date was when you were all in Chicago and discussed the question of a license agreement?

A. Well, I don't know of any meeting in October of that year. I remember distinctly a meeting that I mentioned was in February.

Q. And it was at that time that you made the suggestion to Mr. Day, which afterwards resulted in your visit to Trenton, &c., is that right? A. Yes, yes.

Q. Did you know of any meeting of manufacturers in Chicago in 1908? 1

A. Well, now, there may have been a meeting of manufacturers, but I do not recall being there and discussing this subject. My recollection is it was in February, because I went down to Trenton within a week or a few days after that.

Q. The Government has introduced in evidence a letter marked "Petitioner's Exhibit No. 147," appearing on page 232 of Volume 2, and written by Mr. Ahrens to Mr. Kohler, in which Mr. Ahrens asks Mr. Kohler to wire him when he could meet him in Chicago. Do you know the circumstances under which that letter was written? 2

A. I recall asking Mr. Ahrens to see Mr. Kohler, but I don't know anything about the letter.

Q. And it was pursuant to your request that Mr. Ahrens and Mr. Kohler did meet about that time? A. Oh, yes.

Q. What was your purpose in asking Mr. Ahrens to see Mr. Kohler?

A. Well, I thought he might persuade him to execute a license agreement.

Q. And you desired to have him take a license from you?

A. Yes, I had seen Mr. Kohler and Mr. Murphy a number of times and I had not been able to make any headway with 3 them.

Q. Now, Mr. Wayman, there was a gentleman named Collins from Toledo, I think he was, who went on the stand as a witness for the Government. I would like to know whether you had any agreement with Mr. Collins whereby he took a license or a jobber's license under your patents?

A. Yes, sir; he agreed with me over the telephone to conform to everything in that contract except sign it, and I considered that he had executed an agreement and I notified the manufacturers to sell him.

Q. What was the date of that agreement that you arrived 4 at with him?

A. September 15, and I sent out a bulletin to the various licensees on that date.

Q. He was in the same position as one or two other jobbers, was he not, who did not want to sign but executed by an oral agreement a jobber's license agreement with you?

A. Yes, sir.

Q. How do you fix the date of your telephone talk with him?

A. Well, I remember sending out a bulletin to the manufacturers on that day.

Q. Have you looked up your telephone calls? A. Yes, sir.

Q. And what did you find?

A. That I talked with Mr. Collins on September 15.

Q. The Government has introduced various letters in evidence, and among others, one similar to the others produced by Mr. Grosswiller, appearing on page 425 of the testimony and being Petitioner's Exhibit No. 234, of which Mr. Grosvenor read the words: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware." Do you know anything about how those letters came to be sent to the jobbers?

A. I composed the letter and sent a copy of it to each of the manufacturers and asked them to send it to the jobbers when sending out the license agreements to be executed.

Q. Did you prepare the words of that letter without any consultation with any of the manufacturers, that is the words quoted there?

A. Yes, in this respect I think one or two of the manufacturers asked me if there was any letter to go out with these contracts, so I composed that letter.

Q. A letter containing the words quoted and similar to Petitioner's Exhibit No. 47? A. Yes.

Q. So that those letters were sent out by the manufacturers at your request? A. Yes, sir.

BY MR. HEATH:

Q. And the language referred to was yours? A. Yes, sir.

BY MR. NOBLE:

Q. Mr. Kelly, in his testimony on pages 223 and 224 testified that you suggested a license agreement to him in the fall of 1909. Were you trying to buy from him what is known as the Nesbit patent? A. Yes, sir.

Q. Do you recall when it was that you had those negotiations with him?

A. Well, I think it was beginning with October and along through December—the latter part of December—from time to time that I saw him.

Q. He lived in Pittsburgh, did he not? A. Yes, sir.

Q. And you saw him frequently? A. Yes, sir

Q. You met him from time to time at lunch and places of that sort? A. Yes, sir. 1

By Mr. Heath:

Q. You ate lunch at the same restaurants?

A. Yes, we would meet together frequently.

By Mr. Noble:

Q. On page 234 of the record, volume 1, Mr. Kelly said that you mentioned something to him about being able to get hold of the Arrott patent and that Wolff would throw in a lot of patents? 2

A. Well, I don't know about Wolff throwing in a lot of patents, but I tried to buy an enameling table patent from him at a later date.

Q. From whom?

A. The L. Wolff Manufacturing Company, after I had made arrangements for and did purchase the Lindsay patent.

Q. Is that what you told Mr. Kelly, as nearly as you can remember? A. Yes, sir.

Q. Did you say anything about Wolff throwing in a lot of patents? A. I don't recall saying that, no.

Examination Suspended. 3

At this point the taking of evidence on behalf of the defendants was adjourned until the following morning at 11 o'clock.

4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, Post Office Building,

April 22, 1911.

Pursuant to adjournment the taking of evidence on behalf of the Defendants was resumed at eleven o'clock at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
3 on behalf of the Standard Sanitary Manufacturing Company and others.

EDWIN L. WAYMAN, a witness of competent age, heretofore produced and sworn, resumed the stand, and testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. I notice in going over my notes that I failed to ask you if you granted a license under the Arrott patent to the Day-Ward Company? A. Yes, sir.

Q. And to the Standard Sanitary Manufacturing Com-
4 pany? A. Yes.

Q. And to the Humphryes Manufacturing Company? A. Yes.

Q. And to the United States Sanitary Manufacturing Company? A. Yes.

Q. That license also included the Dithridge and the Lindsay patents, did it not? A. Yes, sir.

Q. Are the jobber's license agreements which you issued in May or June, 1910, now in force? A. No, sir

Q. Are there any restrictions imposed upon the manufacturers as to prices, terms or conditions at this time? 1

A. No, sir.

Q. When did you remove those restrictions that are contained in the license agreement and the jobber's license agreement?

Mr. GROSVENOR: I object to that. It is too indefinite.

A. Well, the latter part of December, 1910.

Q. Just tell me what you did, also tell me what restrictions you removed? 2

A. Everything relative to prices. The balance of the license agreement between the manufacturers and myself is still in effect.

Q. Is there any restriction upon the manufacturers or have there been since the first of January, 1911, to sell only to jobbers who have signed a contract? A. No, sir.

Q. So that provision, which had previously existed is also removed? A. Yes, sir.

Q. Is there any restriction in existence upon jobbers to deal only in licensed ware? A. No, sir.

Q. Is there any restriction upon the manufacturers to sell only first class or A quality goods? A. Yes, sir. 3

Q. At this time? A. Yes, sir.

Q. So that the restrictions of the contract relating to prices, relating to terms of sales, relating to discounts, rebates to jobbers and limiting the sale to licensed jobbers, have been removed. A. Yes, sir.

Q. And have been removed since the first of the year?

A. Yes, sir.

Q. Since the first of the year there has been free and unlimited competition among the manufacturers?

A. Yes, in my estimation, there has always been free and unlimited competition. 4

Q. And there has been since the first of the year?

A. Yes, sir.

Q. And the same is true of all the jobbers?

A. Yes, sir; so far as I know.

Q. I mean any restrictions that you may have imposed?

A. Yes, sir.

Q. I asked you yesterday, or the day before, whether any of the manufacturers or of the licensees, to whom you

granted licenses, were interested or had any interest in any money that you had made or might make out of the granting of the licenses which you did heretofore grant. I now ask you whether they are interested in the rebates which are in your hands and which you may forfeit for a violation of the contract between yourself and any licensee?

A. No, sir; those belong to me, if imposed.

Q. That is to say, if you forfeit any of the gross royalties that belongs to you? A. Yes, sir.

Q. Now, Mr. Wayman, what expenditures did you go to and have you gone to in the granting of these licenses to the several manufacturers in maintaining them and in enforcing your rights under your patents?

A. Somewhere between twenty-five and thirty thousand dollars in expenses in operating the license agreements.

Q. That is exclusive of the purchase price which you paid for these patents? A. Yes, sir.

Q. That does not include, of course, any expenses that you would have been put to for auditing the books which I understood you to say you did not audit, because at the end of the year these restrictions were removed?

A. No, that does not include that because at the end of the year I never completed my organization.

Q. Did any of the licensees contribute anything toward those expenses that you have mentioned other than, of course, the royalties you have collected from them?

A. No, sir.

Q. On page 45, Volume 1 of the Record, I call your attention to this question:

> "How did that provision respecting the appoint-
> "ment of a Commission come into the contract, if it
> "was not the result of that resolution of March 30?"
> And your answer: "At the meeting I held with the
> "Committee at Mt. Clemens, one of the Committee
> "wanted me to transfer my options on patents to a
> "holding company, and I objected to that very
> "strongly and suggested that I would employ an ad-
> "visory Committee. I took the matter up with my
> "counsel with reference to this paragraph, and it was
> "composed by us as it appears in the license agree-
> "ment." And on the next page, 46, "Q. As I have
> "previously pointed out to you, the form of contract

"which you sent around on March 24, did not con- 1
"template an appointment of the Commission?
"A. No.
"Q. Who first suggested it?
"A. I think Mr. Hoelscher of the L. Wolff Manu-
"facturing Company."

Now, who first suggested that you would employ an Advisory Committee? A. I did.

Q. And you made that suggestion in response to the suggestion of someone at Mt. Clemens who wanted you to transfer your options on the patents to a holding company; is that correct? A. Yes, sir. 2

Q. Who wanted you to transfer your options to the holding company? A. Mr. Hoelscher.

Q. Going again to that question on page 46:

"Q. Who first suggested it?
"A. I think Mr. Hoelscher of the L. Wolff Manu
"facturing Company," to what did that apply?

A. That applied to the holding company.

Q. What suggestion did Mr. Hoelscher make?

A. That I transfer my options on the patents to a hold- 3
ing company.

Q. Did you mean that he suggested the appointment of an advisory committee or of a Commission?

A. No, that was my suggestion.

Q. So that your answer on page 46 is misleading, as it reads?

A. I thought that was corrected last fall, because I spoke to Mr. Heath about it at the time, and he and Mr. Grosvenor were going over the testimony and would correct such incorrect statements as were apparent at that time, and I thought that had been done.

Q. Now, I call your attention to pages 88 and 162 of 4
the Record, Volume 1, relative to some questions as to carload lots. I will read this to you:

"Q. Let me understand: Is it not right that the
"jobber buys from the manufacturer at carload prices
"always? A. No.
"Q. Under these contracts? A. No.
"Q. Is he not allowed carload prices to jobbing
"points? A. No, not unless he buys in carloads."

1 And then on page 162:

"Q. That means the jobbers buy at carload prices "and sell at less than carload prices?

"A. Yes, if their sales are less than carloads.

"Q. But, they buy at carload prices?

"A. If they buy in carloads they do, and if not "then at less than carload prices.

"Q. From all the manufacturers?

"A. With the exception of manufacturing points."

Will you please make clear what you meant by your
2 answers to those questions?

A. Well, at the manufacturing points the jobber was given the benefit of carload prices in any quantity. At non-manufacturing points he must pay the less than carload prices if he purchased in less than carload lots.

Q. In other words, if a jobber buys at a manufacturing point he can buy at carload prices although he may buy less than a carload in quantity. Is that right?

A. That is correct, yes.

Q. At non-manufacturing points, in order to get carload prices he must buy a carload or more, is that correct?

3 A. That is correct.

Q. If he buys less than carloads, he pays more than carload prices at non-manufacturing points; is that correct?

A. Yes, sir. Now, in my testimony I stated that in Exhibit No. 133, Page 4, of the white sheet, I stated that the line reading, "Goods must be sold to the plumbers at the quantity prices established in the sheet," was inserted for the reason that the jobber might think that inasmuch as he was buying in any quantity at carload prices he might sell to the plumber at carload prices, and that prevented it.

Q. Now, on Page 116 of the Record, Volume 1, Mr. Gros-
4 venor called your attention to Exhibit No. 3 for Identification which was offered by the Government. He called your attention to these words: "The following resolutions were unanimously adopted, subject to approval of the members at the general meeting to be held on December 1st." The words are in the minutes of the Executive Committee, are they not? A. Yes.

Q. Now, the resolution, as copied in the Record is as follows:

"Resolved: That the manufacturers shall not accept

"any orders for sanitary enameled ware for delivery "beyond March 31st, 1910; that any future delivery "order shall not be accepted without definite specifica- "tion and shipping dates, and subject to the proviso "that the manufacturer shall have the option of ship- "ping any unfilled portions of such future delivery "orders any time during the month of March, 1910." What was the occasion of the passage of that resolution?

A. Why, as I recall it, at that meeting there was a resolution passed removing the guarantee up to installation on non-guaranteed tubs. In other words, the grade of tubs known as the "Nemo" and "Premo" and "Monroe" had been previously guaranteed up to installation, and a resolution was passed to the effect that they would not be guaranteed after the time they left the manufacturers warehouse, and that the jobber should not assume any responsibility in selling them to the plumber. Now, it developed that a lot of the companies took future delivery orders extending over various periods and it was thought advisable to fix a day, or in other words name certain periods in the year so that when any resolution of a similar nature might be offered they would all be on the same basis without a lot of future delivery orders on hand. That is the meaning of that resolution as to March 31st and had nothing to do with this license proposition whatever.

Q. Now, I ask you if that resolution had anything to do with the plan which you were working on to obtain options on the Arrott and these other patents and thereafter grant licenses to any other manufacturers who would take them from you?

A. No, absolutely nothing. May I look at those minutes?

Mr. NOBLE: Yes.

A. (Continuing): I would like to read these two resolutions into the record in explanation of what I have just said. The matter was considered in the Executive Committee and more fully gone into at the next meeting on December 1st.

Q. The resolution about which I just questioned you, which appears in the minutes of the executive meeting of November 30, 1909, dealt with a subject matter which was also considered at a meeting of the Sanitary Enameled Iron Ware Association on the next day? A. Yes, sir.

Q. Now, I call your attention to bulletin No. 14, which appears at Page 60 of the book known as "Petitioner's Exhibit No. 3 for Identification," and I ask you to look at that bulletin, and I ask you what that is?

A. That is a resolution adopted at the general meeting of December 1st, which I just quoted.

Q. What is the sheet of paper which I show you?

A. That is a bulletin issued to the members of the Sanitary Enameled Ware Association.

Q. By whom? A. By myself.

Q. And was this the method that you took of informing the members of the action of the Executive Committee on November 30, and of the Organization itself on December 1st, 1909? A. Yes, sir.

Mr. NOBLE: I will read this bulletin on the Record. The bulletin reads:

"Section 3, Page 14, dated December 1st, 1909, subject, future delivery orders, Bulletin No. 14.

"Resolution adopted at general meeting December 1st, 1909.

"Resolved: That the manufacturers shall not accept any orders for sanitary enameled iron ware for future delivery beyond March 31, 1910; that any future delivery order shall not be accepted without definite specifications and shipping dates and subject to the proviso that the manufacturer shall have the option of shipping any unfilled portion of such future delivery orders any time during the month of March, 1910."

The resolution I read to you is what was sent out in the Bulletin, No. 14, to which you have just been testifying?

THE WITNESS: Yes, sir.

Q. Now, the resolutions which I have read to you and the memorandum of the discussion and the bulletin constitute, do they or not, the entire transaction to which you have referred? A. Yes, sir.

Q. There has been some mention made in the testimony of some action taken by you or by some of the manufacturers of sanitary enameled iron ware not to take any future delivery orders or orders for future delivery beyond the 31st day of May, 1910. To what did that action have reference?

Mr. GROSVENOR: I object to that question as being an inaccurate statement of the evidence. The testimony referred to by counsel evidently being the resolution adopted at the March 30 meeting referring to unfilled orders and being Petitioner's Exhibit No. 4. 1

Mr. NOBLE: I call your attention, in view of the statement of counsel for the Government, to the exhibit to which he refers, which reads:

"Whereas a proposition is pending for a license "agreement and a resale price for the benefit of the "jobbing trade, and whereas long-time contracts are a "menace to such a proposition, we, the undersigned, "Mfr. of En. Ware hereby agree to take no orders for "delivery beyond May 31, 1910. This agreement is "not binding upon the signers unless all the members "of the En. Ware Mnfgrs. are parties thereto and "append their signatures." 2

Now, I go back to my question and ask you again to what that action of which I have inquired referred?

A. The general subject of this manufacturer's license agreement and jobber's license agreement.

Q. What did the action of not taking orders for delivery beyond May 31, refer to? What was the occasion of it? 3

A. Well, the idea was that with these licenses going into effect, as near as I could estimate about June 1, that it would not be advisable to have a lot of unfilled orders on hand on that date.

Q. Then, this action related to the proposal which you made to the various manufacturers to grant them licenses?

A. Yes, sir.

Q. And you expected to be able to put those licenses into effect immediately after the 31st day of May, 1910?

A. Yes, sir.

Q. Is that correct? A. Yes, sir. 4

Q. Did that action have any reference of any kind to the resolutions of the Sanitary Enameled Ware Association to which your attention has been called in the minutes of that Association, of November 30 and December 1st? A. No, sir.

Q. The action fixing May 31 as a date beyond which future delivery orders would not be taken was or not the action of the Sanitary Enameled Ware Association?

A. No, sir; that was not a meeting of the Association?

1 Q. What was that occasion?

A. That was a meeting of the manufacturers for the purpose of—

Q. Who had called that meeting?

A. I had for the purpose of considering the license agreement that I had prososed to them, and copies of which I had sent to them previous to the meeting.

Q. I now call your attention to Page 167 of the Record, Volume 1, to a letter on your letterhead, being Petitioner's Exhibit No. 102, and dated May 29, 1910, headed "Salesmen's meeting." I call your attention to and ask you to read
2 through that letter so that I can ask you some questions about it.

The witness then did as requested.

Q. What was the meeting that you there referred to?

A. Why, I thought that I would get all the salesmen together, including the manufacturers—

Q. Salesmen of whom, of your licensees?

A. Yes, and the manufacturers themselves, and explain to them all the meanings and operations of the various paragraphs in the jobber's license agreement. The jobbers heard
3 this was going into effect and there were a lot of questions being asked the different companies that the manufacturers did not know about themselves, and I thought I would get them together and go over the whole thing with them so that when the salesmen called on the jobbers with reference to executing the contract they would have a thorough idea of what all the provisions meant?

Q. Was that idea proposed by you? A. Yes.

Q. So that you could fully instruct the salesmen and such manufacturers as did not understand your bulletin and your literature, upon what your license agreement provisions
4 meant?

A. I remember I was talking to Mr. Carl Falk, of the Kerner Company, and he said that there was a lot of misunderstanding among the salesmen of the provisions of the license agreement and what it might be, and he gave me the idea of calling these people together and explaining what was meant.

Q. You say here, "I would therefore like to have the individuals know the story from A to Z and be prepared to retell it to their jobbers with a complete knowledge of the situa-

tion and in a convincing manner." Does that correctly describe your purpose in trying to arrange for this meeting? 1

A. Oh, yes.

Q. Did you bring about this meeting? A. Oh, yes.

Q. Did you explain to the various salesmen and jobbers and manufacturers what you meant?

A. Not to the jobbers, but to the manufacturers and their salesmen.

Q. These were the salesmen of the manufacturers?

A. Yes, sir; there were about forty or fifty of them present.

Q. Now, I call your attention to Petitioner's Exhibit No. 101, which appears on page 166 of the Record, it being dated May 11, in which you say: "Will you kindly advise me by return mail how many copies of the resale price book you will require for your salesmen and office use." Is that a letter applying to your licensees? A. Yes, sir. 2

Q. (Reading): "I will send from this office the necessary copies to the jobbers so that in naming your quantity you need not take into consideration your customers' requirements. Yours very truly." Did you send the copies there referred to to the jobbers in sanitary enameled iron ware?

A. Yes. 3

Q. Direct? A. Yes.

Q. I call your attention to the note appearing on the jobber's license agreement being Petitioner's Exhibit No. 11, and reading "Note: This contract must be executed by the purchaser in order to purchase sanitary enameled iron ware," and ask you why you put that there and for what purpose?

A. Well, the jobbers as a whole were very much in favor of the jobber's license agreement.

Q. Had you talked to a great many of them?

A. Yes, I thought there might be some delay in having the licenses signed, and in order to get the prices arranged 4 uniformly and the license fixed up, that is why I put that in there.

Q. I call your attention now to pages 183 and 184 of the Record, Volume 1, and to the following questions, where you are referring to a paper which you say was drawn up three years ago in rough form; this is the question:

"Q. That was the time you were with the—

"A. (Interrupting): Seamless Steel Bathtub Company.

1 "Q. Did they make porcelain enameled iron ware?

"A. They made porcelain enameled steel bathtubs, which were similar to enameled cast iron bathtubs.

"Q. Are there any more firms manufacturing that kind?

"A. No, except a German concern, I think.

"Q. It is not able to compete with sanitary enameled iron ware, is it?

"A. I believe it is.

"Q. It cannot be run on a paying basis, can it?

"A. No—"

2 Then you were interrupted; what were you going to say there?

A. I was going to point out that we had not gotten to a strictly paying basis, that is our output was not large enough to be profitable.

Q. What do you mean by "our?"

A. The Seamless Steel Bathtub Company. At the rate we were running, our costs were higher than our selling price. We were getting fourteen to fifteen dollars a tub, on the basis of an output on which we had a capacity that could have competed on a profitable basis with the cast iron
3 enameled tub.

Q. That is the answer you were going to make?

A. Yes, sir; along those lines.

Q. I now call your attention to page 189 of the Record, Volume 1:

"Q. I will read on (reading): 'when notified in writing by the Licensor upon two-thirds vote of all the companies operating under a similar license or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose.' You remember that provision?

4 "A. Yes."

At that time Government's counsel was reading from Petitioner's Exhibit No. 109, which appears on page 161 of Volume 2 of the Record, from that portion appearing page 163, folio 1. He then asked you:

"Q. That provision contemplates, does it not, the appointment of an Executive Committee?

"A. Yes.

"Q. You finally, by your arrangement of May 6, 1910, had appointed a Commission? 1

"A. As representing the other manufacturers.

"Q. That Commission, you have testified, was elected by vote of the manufacturers after they entered into the licensing arrangement on May 6?

"A. Yes."

Now, I ask you what you meant by that Committee there referred to?

A. Why, at the time I drew this up, that is Petitioner's Exhibit No. 109, I was considering a Committee, but I cut that out in the proposed license agreement that I furnished to the manufacturers just previous to the meeting in New York City on the 29th and 30th. 2

Q. Were the recommendations of that Executive Committee, as you were then considering them, binding upon you as you planned it in Exhibit No. 109? A. No, no.

Q. Did the Committee which you were there considering have anything at all to do with the Commission which was later elected after you had granted the licenses to the various licensees?

A. No, I thought I would get rid of the Committee altogether. But, when at Mt. Clemens this holding question came up, then I suggested an Advisory Committee. 3

Q. The Executive Committee which is mentioned in Exhibit No. 109 was dropped entirely by you when you began to put your license agreements, as you subsequently granted them, into form, is that correct? A. Yes, sir.

Q. And has it any reference to the Commission or Committee which you afterwards did accept and provide for in the license agreements similar to Petitioner's Exhibit No. 9.

A. No, it simply illustrates what I had in mind when I drew up this paper known as Petitioner's Exhibit No. 109 at that particular time. 4

Q. The Commission which you afterward provided for in the licenses which you granted, you say, was first thought of and first suggested by you in view of the suggestion that you turn over the patents which you had acquired to a holding company; is that correct?

A. Yes, sir; that is the options on the patents which I had at that time.

1 Q. And these two thoughts have nothing to do with each other? A. No.

Q. In that same exhibit there is a provision appearing in the Record, Volume 1, pp. 190, 191 (reading):

> "Penalties shall be deducted from all unpaid re-"bates at the rate of $1,000 for each violation and 75 "per cent. of all penalties retained by the Licensor will "be divided among the licensees in good standing dur-"ing the month in proportion to the amount each com-"pany's royalty bears to the amount to be divided."

2 Was that idea dropped by you? A. Yes, sir.

Q. Did you carry it any further than you had at that time, after you drew up Exhibit No. 109?

A. No, when the final license agreements were entered into it was thoroughly understood that any unpaid rebates were my own for violation of the contract.

Q. And that provision is contained in the contract of license? A. Yes, sir.

Q. And you in addition to that told the various licensees? A. Yes, sir.

Q. And they have no interest and never have had any
3 interest in those penalties? A. Absolutely none.

Q. Nor in the royalties which you received? A. No, sir.

Q. Mr. Wayman, it has been testified that Mr. Jackson, at your request explained the legal features of these license agreements at a meeting which you called in New York at the Hotel Astor on the 29th and 30th of March. Who asked Mr. Jackson to go there? A. I did.

Q. Who paid his fees? A. I did.

Q. Did anybody contribute toward your paying those fees? A. No, sir.

Q. You had previously conferred with Mr. Jackson about
4 this matter? A. Yes, sir; in March.

Q. Did the fee which you paid him cover your previous conferences? A. Yes.

Q. On Page 143 of the Record, Volume 1, there are Petitioner's Exhibit No. 74 and on Page 144 Petitioner's Exhibit No. 75, they being some telegrams relative to meeting Mr. Caldwell of the Cahill Iron Works, and Mr. Ahrens seeing him in Louisville; how did that happen to come about?

A. Mr. Ahrens was in Chicago at the time and I understood that Mr. Caldwell would be there. I called Mr. Ahrens

over the 'phone and he said that Mr. Caldwell had left, and I asked him to see him about the Crane Company. I understood that he afterward saw him in Louisville. 1

Q. And he did so at your request? A. Yes, sir.

Mr. NOBLE: I have not had the opportunity of examining the minutes covering Mr. Wayman's testimony, as they are not all written out. The ones which are written out cover only a small portion of what he has testified to. It may be that when I read them through there will be some few questions which I will want to correct, if the Record is not quite clear, and they may suggest a few other questions. I also have a few other questions which I will want to ask Mr. Wayman, but I would like to take a recess at this time. 2

Mr. GROSVENOR: Until two o'clock?

Mr. NOBLE: Yes.

At this point a recess was taken until two o'clock.

After Recess.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand and testified as follows: 3

EXAMINATION BY Mr. NOBLE (continued):

Q. Mr. Wayman, the Government alleges that during the latter part of 1909 and during the early part of 1910, you and the other defendants knowingly entered into a combination and conspiracy to restrain the trade in sanitary enameled iron ware. I desire to know and inquire from you whether you ever entered into any agreement or understanding with these other defendants, or any of them, singly, separately or collectively or any groups of them, to restrain, hamper, or impede the trade or block the trade or to lessen competition in sanitary enameled iron ware? A. No, sir. 4

Q. Did you ever have any agreement or understanding to do any of the things which I have mentioned with anybody?

A. No, sir.

Q. The Government alleges that the defendants made an agreement or had an understanding or entered into a combination or conspiracy to eliminate and suppress competition between each other; is that true?

A. No, sir; the license agreements invite competition.

Q. Did you ever enter into any agreement with any of these defendants or with any of them collectively or any groups to eliminate or suppress competition? A. No, sir.

Q. Or do anything to eliminate or suppress competition in sanitary enameled iron ware? A. No, sir.

Q. Did you ever enter into any agreement with any of the other defendants or any groups of any of the other defendants to fix the price at which sanitary enameled iron ware should be sold?

A. No, sir; except as expressed in the license agreements.

Q. And those were made with each defendant separately, weren't they? A. Yes, sir.

Q. Did you grant these defendants licenses separately under your patents? A. Yes, sir.

Q. Now, aside from the terms of these license agreements and jobber's license agreements, did you fix any terms upon which sanitary enameled iron ware should be sold?

A. No, sir.

Q. Did you fix any terms with any of the defendants jointly or in groups or with any of them together, or were they separately?

A. They were made separately with each licensed manufacturer.

Q. Other than the prices, terms and conditions which are fixed by your licenses to these defendants and in the jobber's license and the price sheets and the differentials therein contained and the discounts and rebates that were allowed upon purchases, did you have any agreement or understanding of any kind, or sort or description with these defendants?

A. No, sir.

Q. The Government alleges that the defendants determined upon and are observing uniform methods of selling their product of sanitary enameled iron ware to jobbers under written contracts whereby each jobber must sell at fixed prices. I ask you did you ever make any agreement with any of these defendants as to the methods at which they were to sell to jobbers except as expressed in your license agreements, jobber's license agreements and the price sheets?

A. No, sir.

Q. Did you make these agreements to which I have just referred in the manner I have described them with the defendants or with each of your licensees singly? A. Yes, sir.

Q. How? A. Singly.

Q. Was there any agreement between the licensees themselves and you? A. No, sir. 1

Q. Was there any agreement between the licensees on the one hand and you on the other, except as expressd by you in the license agreement? A. No.

Q. What was your relationship to these defendants?

A. I was the licensor of each individual licensee.

Q. Did you ever have any other relationship with them in connection with this matter? A. No, sir.

Q. The Government alleges that there is a combination among these defendants by which no licensee will sell a jobber who has not signed a contract and agreed to sell at the resale price. Is there any such combination or understanding between them? A. No, sir. 2

Q. Was there ever any understanding or combination or contract or agreement between you on the one hand and the licensees, defendants here, on the other, in respect to that matter? A. No, sir.

Q. Now, the Government says in its Petition that no defendant, that is no licensee, will sell to any jobber sanitary enameled iron ware unless he is a party to this combination. Now, is there any combination? A. No, sir.

Q. Was there ever any combination? A. No, sir. 3

Q. The Government in its Petition alleges that no defendant will sell any of its product of sanitary enameled iron ware to any person or company who is not recognized by all the defendants as a jobber, or as a "legitimate jobber"; is that so?

A. No; they were privileged to sell to any persons they saw fit.

Q. Was there any agreement among these defendants and you as to who was a jobber or a "legitimate jobber?"

A. No, sir.

Q. The Government alleges in its petition that the prices upon sanitary enameled iron ware have been and are now fixed by the defendants by mutual agreement; is that true? A. No, sir. 4

Q. What is the truth about the prices?

A. I fixed them personally.

Q. Was there ever any agreement among these defendants that the prices should be fixed without competition among themselves? A. No, sir.

Q. Were the reports which you received from these

manufacturers as to their monthly output, or rather as to the number of furnaces in operation or the reports which you received, whatever they were, turned over to any of the other manufacturers? A. No, sir.

Q. Have these reports which you have received from the various licensees from time to time ever been examined by any other manufacturers? A. No, sir.

Q. Has any other manufacturer ever asked to see them? A. No, sir.

Q. Have you ever communicated their contents to any other manufacturer? A. No, sir.

Q. Mr. Wayman, you have filed an answer in this suit, have you not? A. Yes, sir.

Q. Was it verified? A. Yes, sir.

Q. When did you verify it?

A. On or about the twentieth day of September, 1910.

Q. Was that answer thereafter filed by your direction as your defense? A. Yes, sir.

Q. Was what you said in it true? A. Yes, sir.

Q. Is it true now? A. Yes, sir.

Mr. NOBLE: There may be some further questions which I will have to ask this witness upon reading the record of his testimony.

Mr. GROSVENOR: Counsel for the Government suggests that after the testimony of Mr. Wayman has been written up by the stenographer, and also the testimony of the other witnesses at Pittsburgh, which has not yet been written, and after the conclusion of the Government's rebuttal, which will be on Monday, April 24, that we have a meeting either at the end of next week or the week after, at which time such corrections as will be necessary in the Record may be made by counsel, and also such additional questions as counsel for defendants desires to address to the witness Wayman may be asked of him.

EXAMINATION BY MR. GROSVENOR:

Q. Mr. Wayman, I show you certain typewritten letters as follows, which I ask you to read over to refresh your recollection. They are letters dated August 25, 1909, signed by you as Commissioner, and addressed to Mr. J. A. Kelly, care of the Iron City Sanitary Manufacturing Company,

POOR COPY

Pittsburgh, Pennsylvania; and a letter dated December 18, 1909, appearing in Petitioner's Exhibit for Identification No. 3, and addressed "Dear Sir," with a blank space for signature and with the word "Commissioner"; and a letter dated January 18, 1910, appearing in the same Exhibit No. 3, with a blank space for the signature and below the typewritten word "Commissioner"; and a letter January 22, 1910, headed "Market Conditions," with a blank space for signature and then the word "Commissioner," this letter also appearing in Petitioner's Exhibit No. 3 for Identification; and a letter dated March 15, 1910, addressed to Mr. J. A. Kelly, Iron City Sanitary Manufacturing Company, Pittsburgh, Pennsylvania, signed "E. L. Wayman, Commissioner"; and a letter dated April 27, 1910, addressed to Mr. J. A. Kelly, and signed "E. L. Wayman." Were those letters all written by you? 1 2

A. This letter of December 18, was undoubtedly sent out by me, but I do not recall the circumstances. I recognize all the other letters.

Q. Were all these letters written by you? A. Yes, sir.

Mr. GROSVENOR: Now I offer these letters in evidence as Petitioner's Exhibits numbered as follows: The letter of August 25, 1909, as Petitioner's Exhibit No. 287; letter dated December 18, 1909, as Petitioner's Exhibit No. 288; letter dated January 18, 1910, as Petitioner's Exhibit No. 289; letter dated January 22, 1910, as Petitioner's Exhibit No. 290; letter dated March 15, 1910, as Petitioner's Exhibit No. 291; letter dated April 27, 1910, as Petitioner's Exhibit No. 292. 3

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 287, 288, 289, 290, 291 and 292" respectively. 4

By Mr. GROSVENOR:

Q. This letter of August 25, 1909, which is taken out of the Exhibit No. 3 for Identification offered by the Petitioner, and which is now marked as "Petitioner's Exhibit No, 287," was written by you while you were Commissioner?

Mr. NOBLE: I object to the admission of the letter in evidence and I object to the question on the

ground that it is incompetent, immaterial and irrelevant; that it has nothing to do with any of the issues involved in this case and is not binding upon any of the defendants in this case.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

A. Yes, sir.

Mr. GROSVENOR: This letter, which is Petitioner's Exhibit No. 287, reads as follows:

"August 25th, 1909.

"Dear Sir:—

"Will you kindly advise me by return mail what "especially low prices by competitors have been en- "countered by your Company; in the sale of its 'small "ware' product, that show an unreasonable and un- "necessary difference between what might and should "be obtained.

"This does not refer to ordinary cuts that are some "times made to influence sales, such as 2½ and 5 per "cent., but differences in some instances that I under- "stand are 20 per cent. below the accepted market.

"Some of the factories seem to be taking business "at much lower prices than necessary and that in the "face of a rising market with a fair volume of busi- "ness appear unwarranted.

"Will you kindly send me such detailed information "as you may have regarding matters along these lines "that are particularly embarrassing?

"Yours very truly,

W/D "Commissioner."

By Mr. GROSVENOR:

Q. Was this mailed by you to the various members of the Association of which you were Commissioner.

Mr. NOBLE: I object to that question. The witness naturally does not know whether it was mailed or not.

A. As I recall, it was sent to only a few of the companies.

Q. It was sent to some of the companies? A. Yes.

Q. Now, this letter of December 18, 1909, which is Petitioner's Exhibit No. 288, being a typewritten sheet signed by you and addressed to Mr. J. A. Kelly, was that letter sent out by you while you were Commissioner? 1

Mr. NOBLE: I object to the offer and admission of the letter and to the question on the same grounds as stated to the last exhibit.

A. Yes.

Q. I point out to you the address of Mr. Kelly which is in original typewriting, whereas the rest appears to be a carbon copy, and I ask you if that refreshes your recollection as to whether or not you sent that letter to others besides Mr. Kelly? 2

Mr. NOBLE: I object to the question on the ground that the witness cannot possibly say whether the letter was mailed.

A. I am under the impression that that is a letter which I addressed to the various companies.

Mr. GROSVENOR: This letter reads as follows:

"Dec. 18th, 1909. 3

"Mr. J. A. Kelly,
"c/o Iron City Sanitary Mfg. Co.,
"Pittsburg, Pa.

"SPECIAL MEETING.

"Dear Sir:—

"Certain market conditions have remained un-
"changed since the last meeting and it is deemed ad-
"visable to call a Special Meeting for Wednesday, Dec.
"22nd, at this office at 10:30 A. M. in order that closer 4
"working arrangements than have existed in the past
"may be discussed.

"It is apparent, that notwithstanding the statements
"made at the last meeting and the discusssion that
"took place regarding market prices, that there is
"still a wide variation on many articles.

"It is highly important that you attend this meet-
"ing and assist in some action that will tend to main-

1 "tain the market in a better manner than now obtains.
"Will you please advise if you will be present?

"Yours very truly,

"E. L. Wayman,
"Commissioner."

Q. I show you Petitioner's Exhibit No. 289, being a letter January 18, 1910, and taken from Exhibit No. 3 for Identification, offered by the Petitioner, and ask you if you sent that to the various manufacturers who were members of the Association?

2 Mr. NOBLE: I make the same objection and the further objection that the witness cannot possibly state whether it was sent to the various manufacturers. The letter bears no post mark; it is not addressed to anybody and it is in no way binding upon any of the defendants in this suit.

A. I am under the impression that I sent that out.

Q. This is your office copy, is it not?

A. I presume so; I don't know positively whether it is or not.

Q. Well, it is taken from the book in which you kept the 3 office copies of your correspondence with the several manufacturers?

A. If it was in that book, it is undoubtedly my office copy.

Mr. NOBLE: I object on the ground that the book has not been in his possession for the last eight or ten months.

Q. Well, is that the style of paper that you had in your office?

A. Yes, that is with the three holes punched in the left hand side; whether that is the particular paper, I do not 4 know.

Q. Do you recall writing to the manufacturers about that time? A. Yes.

Q. That is, a letter of this purport? A. Yes, sir.

Mr. GROSVENOR: This letter reads as follows:

"Jan. 18th, 1910.

"Some of the Manufacturers report that business is "exceptionally dull and inquire if market prices are "being maintained.

"I believe this situation is true generally due to the 1
"bad weather existing and the taking of inventories by
"the Jobbers. If your Company is experiencing a slack
"condition at this time, I trust you will not try to
"stimulate the volume of your business by any weaken-
"ing in prices but await the natural order of things
"which will undoubtedly bring you your share of the
"business at fair prices.

"Yours very truly,

"Commissioner."

Q. I now show you Petitioner's Exhibit No. 290, it being 2
a letter dated January 22nd, 1910, and consisting of two sheets headed "Market Conditions," and taken from Petitioner's Exhibit No. 3 for Identification, and I ask you if that is a letter which was addressed by you to the various members of the Sanitary Enameled Ware Association of which you were the Commissioner?

Mr. NOBLE: I object to the letter on the same grounds as previously stated. The letter cannot be binding upon any of these defendants in this action.

A. Well, of course, I cannot recall the various replies 3
and from whom they may have been received in answer to this communication which is evidently an answer to the letter of January 18.

Q. Is not that a letter written by you subsequent to the letter of January 18, and purporting to give certain replies received by you in response to the letter of January 18?

A. Yes, sir.

Q. Then, this letter is a copy of the letter sent out by you on this date to the various members of the Association?

A. I would judge that to be so, yes.

4

Mr. GROSVENOR: Petitioner's Exhibit No. 290 reads as follows:

"Jan. 22nd, 1910.

"Market Conditions.

"I am pleased to give you the following extracts from letters received from various parts of the country, in reply to my C. L. letter of Jan. 18th with reference to market conditions. The replies received

indicate a dull market due principally to natural conditions and an optimistic feeling for the future.

"'We are no doubt passing through the dullest period of the year so far as enameled ware is concerned but we believe we are going to have a good demand a little later. We are maintaining the same prices, we have been making since the forepart of December and expect to continue to do so. We have in no instance deviated from these prices and we think it would be a mistake for any manufacturer to cut prices with a hope of getting business as that would have a tendency to aggravate the present situation still further and in the end would result in a loss.'

"'We see no reason why any manufacturer should cut prices at this time, as the market will no doubt right itself in the near future, when everybody will have all the trade they can handle in this line. It seems to us in view of the good business apparently ahead of us that we ought to obtain better prices for bath tubs and small ware.'

"'Our order sheets for the present year and for the last few weeks of last year, especially on small ware, have been very unsatisfactory, particularly so since the first of January. The year, however, is young and we are not at all uneasy but we have heard persistent rumors, and in many cases absolute facts as to ridiculous prices being made on the part of certain manufacurers.'

"'Business is very dull. We have had a most remarkable falling off in business within the last thirty days. We know that this is largely due to the severe weather. It has been almost impossible to do hauling; locally, a great many contractors are not working on buildings at the present time, so that they require no goods whatsoever. We believe the dullness in trade at this time is probably not due to any cutting in prices, but we believe it is due more largely to the severe winter which has practically put the building business at a standstill.'

"'We are not hearing of any cutting of prices only as reflected by the prices that some of the Jobbers are making. We can see no reason why manufacturers should be discouraged over a lull in business

at this season of the year, because January is usually a month of inventories and do not look for much business. For your information wish to say, however, that our business is considerably better than it was last January and we are very optimistic about the prospects for 1910.' 1

"'Your letter of January 18th regarding the state of the market and advising that several of the Manufacturers report business unusually dull, received. We have found it so, but know that the loss of business to our Company, at least, is not a question of price, and it is one of the biggest kind of mistakes for Manufacturers to quote low prices as it does not bring out any more business. Just now the business is not there and it would seem to the writer the best way to stimulate business would be to steady the price if possible.' 2

"Yours very truly,

"Commissioner."

Q. Will you look at Exhibit No. 291, being the letter addressed to Mr. J. A. Kelly, and dated March 15, 1910, signed by you, and I direct your attention to the fact that Mr. Kelly's name is in original typewriting and the rest is a carbon. Was that a letter sent out by you to the various members of the Association? 3

Mr. NOBLE: I object; the witness cannot state if the letter was sent out; whether he wrote that letter he might say, but he cannot say whether it was sent.

A. I remember writing such a letter.

Q. That is your signature, is it? A. Yes, sir.

Q. Did you write it for the purpose of sending it out to the various members of the Association? A. Yes. 4

Mr. GROSVENOR: Petitioner's Exhibit No. 291 reads as follows:

1 THE SANITARY ENAMELED WARE ASSOCIATION
1509 Arrott Building,
Pittsburgh, Pa.

E. L. Wayman,
Commissioner. W-3151011-I

March 15th, 1910.

Mr. J. A. Kelly,
C/o Iron City Sanitary Mfg. Co.,
Pittsburgh, Penna.

2 Dear Sir:

In view of the bad weather conditions that have existed, jobbers' stocks throughout the country are very heavy.

Prices that are being made here and there by some of the manufacturers are not creating any new business but are simply disturbing conditions to the detriment of all the manufacturers and making the jobbers dissatisfied and uneasy.

Many of the leading jobbers with whom I have personally talked have expressed the desire that the manu-
3 facturers sustain the market and stop quoting some of the ridiculous prices that have been made recently. The business is not to be had at any price as it doesn't exist.

Many of the factories which I have recently visited have appreciated the conditions and are running very light. They will continue to do so until the demand legitimately increases.

In view of the fact that we will have a meeting the latter part of the month, the Results of which will unquestionably be beneficial to all, I trust that in the
4 meantime you will do your share towards correcting some of the "foolishness" that has been apparent the last two or three weeks.

Yours very truly,
(Signed) E. L. Wayman,
Commissioner.

Q. I now show you Exhibit No. 292, which is dated April 27, 1910, and addressed to Mr. J. A. Kelly, and I point out the fact that the name of Mr. Kelly is in original typewriting and

the rest is in carbon, and I ask you if that was written by you to be sent out to the various manufacturers of the Sanitary Enameled Ware Association? 1

Mr. NOBLE: I object to the question on the grounds previously stated, and I call attention to the fact that the letter is written on the letterhead of Mr. Wayman and he has already stated a number of times that any matters that had to do with his license plan he did not send to the members of the Association but sent them to the individual manufacturers of sanitary enameled iron ware.

2

A. I remember issuing such a letter in connection with the license agreement.

Q. And this is on your personal letterhead? A. Yes, sir.

Q. And that is your signature? A. Yes, sir.

Q. It refers to the Niagara Falls meeting about which you testified? A. Yes, sir.

Q. Now, is it not a fact that during the latter part of 1909 and the early part of 1910, the competition between the various manufacturers of sanitary enameled iron ware had been keen as to prices?

Mr. NOBLE: I object to the question as to prices. How can this witness, who was not then a manufacturer, answer such a question. 3

Mr. GROSVENOR: If you are not able to answer the question, please read these letters for the purpose of refreshing your recollection as to the conditions prevalent during the time I mentioned (handing same to witness).

A. The competition between some of the companies on certain lines of goods was very keen. In fact, I know of goods being sold below cost.

4

Q. Did you represent to any of the manufacturers in talking to them about the license arrangement or the proposed license agreements that they would improve conditions in these respects, that is, that it would enable them to eliminate the trouble which had arisen out of these excessively low prices to which you refer?

A. That was one of the conditions considered in the license agreements. That is, I hoped, of course, to get a revenue for

each of the companies to enable them to make a reasonable profit.

Q. It was then your expectation, that your agreements, if entered into, would prevent the continuance of these troubles due to excessively low prices?

Mr. NOBLE: I object to the question. It is an attempt to make the witness, by making references to a part of the letters and answer as to a part of them, apparently speak as to the whole. The question is not fair.

Mr. GROSVENOR: Read the question, please, will you?

The stenographer then read the last question.

A. Well, I had hoped as one of the features of the license agreements, to enable the companies to abolish ruinous competition.

Q. And that was one of the inducements that you held out to them, when you asked them to enter into these license agreements?

Mr. NOBLE: I object to that on the ground that it is immaterial, incompetent and irrelevant.

A. Yes.

Q. Among others? A. Yes.

Mr. GROSVENOR: Petitioner's Exhibit No. 292 reads as follows:

"April 27th, 1910.

"Mr. J. A. Kelly,
"c/o Iron City Sanitary Mfg. Co.,
"Pittsburgh, Penn'a.

"Dear Sir:—

"I have just returned from Niagara Falls, N. Y., at which point the Jobbers throughout the country, with the exception of those located on the Pacific Coast, held a meeting for the purpose of organizing a National Jobbers Association. Such an Association was formed and it is said that this meeting was one of the most representative ever held.

"The writer was given the opportunity of appearing

before the Jobbers in Executive Session and of explaining the license and resale agreement plan that will go into effect on June 1st. The matter was discussed in detail, thoroughly explained and all possible objections satisfactorily answered. As a result they gave their *unanimous approval* of the entire matter and pledged their support and hearty co-operation subject to all the conditions named in the Jobber's Agreement Form, copy of which you have. 1

"This, together with the approval already given by the Pacific Coast jobbers, establishes the fact that the Jobbers universally with a few exceptions are ready, entirely willing and want to work in harmony with the manufacturers' plans for the promotion of improved trade conditions and the production and disposal of a higher grade of ware. 2

"I wish to add further that the approval given at this meeting was not of an ordinary formal, half hearted nature but direct and of a different character than I have heretofore seen or heard of in any former negotiations with your distributors. I was made to feel that the manufacturers are pursuing the *only* and *proper* course. 3

"Yours truly,

"E. L. Wayman."

Q. Mr. Wayman, on your examination by the counsel for the Government, on October 31, 1910, you were asked certain questions appearing on page 31 of the Record respecting Petitioner's Exhibit No. 7, printed in the volume of the exhibits, which is known as volume 2, on page 12, the exhibit being the minutes, of the third meeting of the members of the enameled Ware Association, held February 1, 1910; and particularly you were questioned respecting a request from New York jobbers that the manufacturers meet their committee to confer on the subject of resale prices and the recognition of only Blue List jobbers. Will you look at that exhibit and read particularly this paragraph (indicating)? 4

The witness did as requested.

Mr. GROSVENOR: Have you read it?

THE WITNESS: Yes.

Q. You testified on page 31:

1 "A. That came in the shape of a request to me as Commissioner of the Sanitary Enameled Ware Association.

"Q. From whom?

"A. The New York jobbers.

"Q. From whom was it?

"A. A man named Conchar, as Secretary of a New York organization. I have forgotten the exact name of it. It was the Metropolitan Jobbers Association, or something like that."

Please read this testimony here on pages 31 and 32 of the
2 Record?

A. Yes, I remember it perfectly.

Q. Now, I show you a carbon copy of a letter dated February 2nd, 1910, and addressed to Mr. J. W. Conchar, 41 Park Row, New York, and ask you if that is a copy of a letter sent by you to him on the day indicated?

Mr. NOBLE: I object to the letter, on the ground that it is incompetent, immaterial and irrelevant and for the same reasons as previously stated.

A. Yes, I remember sending this letter.

3 Q. Is that a copy? A. Presumably so.

Q. Did you send a copy of that letter to the various members of the Sanitary Enameled Ware Association?

Mr. NOBLE: I object on the same grounds previously stated.

A. I am under the impression that I did.

Mr. GROSVENOR: I offer this as Petitioner's Exhibit No. 293.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 293."

4 Mr. NOBLE: I object. That is not proper re-direct examination on the part of the Government, and the letter is incompetent, immaterial and irrelevant.

Mr. GROSVENOR: I suppose I should say that this letter was not in the possession of the Government at the time of the direct examination of Mr. Wayman.

Mr. NOBLE: The same objection.

Petitioner's Exhibit No. 293 reads as follows:

"Feb. 2nd, 1910. 1

"Mr. J. W. Conchar,
"41 Park Row,
"New York City.

"Dear Sir:—

"Replying further to your letter of Jan. 6th and referring to my letter of the 10th, W-1101004-I regarding requested changes in Trade Customs by the M. P. S. J. Ass'n. This matter was considered yesterday at the meeting of the manufacturers, together with your request that the manufacturers meet a Committee from your Association to confer on the subject of re-sale prices and the recognition only of the Blue List jobbers in your city. 2

"The manufacturers wish to advise you that they are now trying to work out the scheme of Re-sale Prices and at the meeting yesterday considerable progress was made in this direction. You can well realize that this matter is of considerable magnitude and covers numerous subjects that have to be disposed of satisfactorily in harmonizing 19 manufacturers together with their distributors. 3

"The manufacturers believe that the plans they have in view, while they may not embrace all of the requests that have been made by your Association, will be of such scope, that they will be able to provide for reasonable profits to the jobber, thereby making enameled iron ware more desirable to handle, than in the past.

"The manufacturers will be pleased to meet your Committee just as soon as their own plans are in a more concrete form and believe this will be the case in the near future. 4

"I will be pleased to arrange this meeting just as soon as possible.

"Yours very truly,

"Commissioner."

Q. Mr. Wayman, you said during your examination by Mr. Noble that you obtained an option on the Arrott patent on December 28? A. Yes, sir.

Q. 1909, from Mr. Dawes? A. Yes, sir.

Mr. NOBLE: This testimony was gone into by the Government on direct examination. He testified to the same thing in reply to the Government's questions at that time. This is not proper re-direct examination.

Q. Can you give the terms of that option?

A. Yes. Mr. Dawes gave me an option to exercise in six months either to become an exclusive licensee, they retaining a non-exclusive license, or if they decided to take a license from me, to sell me the Arrott patent for a term of five years.

Q. Previous to this meeting on December 28, with Mr. Dawes you had had other meetings with him? A. Yes.

Q. At those meetings had he expressed an unwillingness to consent to any arrangement whereby the Standard Sanitary Manufacturing Company should lose entire control of the Arrott patent?

THE WITNESS: What was that question.

The last question was then read by the stenographer.

Mr. NOBLE: I object to the question on the ground that it does not state what the witness said at all. If the Government means to inquire what the witness said, I have no objection, but I do object to the form of the question and to its terms as not being a correct statement of what the witness has testified to.

A. That is, he did at first. He had gradually led up to it.

Q. This meeting of December 28, then, was the first meeting at which he stated that he would be willing to enter into an arrangement whereby you could control the Arrott patent? A. Or purchase it.

Q. That is, this is the first meeting at which he indicated a willingness to deal with you?

A. No, I was gradually making headway with Mr. Dawes from time to time, and on December 28, we came to this agreement.

Q. That was the first time that he definitely stated to you that he would enter into an arrangement with you?

A. Yes.

Q. Was the word "option" used on that day?

A. Yes, sir.

Q. Who used it? 1

A. Mr. Dawes in talking to me. That is what I was after, an option.

Q. But you did not pay anything for it? A. No, sir.

Q. If you had obtained an option on December 28 from Mr. Dawes, why, in March, when Mr. Torrance signed the memorandum of agreement on behalf of the Standard Sanitary Manufacturing Company, namely, Petitioner's Exhibit No. 3, did you state to him—as you testified yesterday you did in answer to Mr. Noble's question—why did you state to Mr. Torrance, "Now, this means that you will enter into a license agreement with me?" A. No. 2

Q. What did you say?

A. I said "This means that you will sell me the Arrott patent." The Exhibit you are referring to was a memorandum of agreement to enter into a license agreement, so when Mr. Torrance signed this agreement for the Standard Sanitary Manufacturing Company to enter into a license agreement, then I said this means he would enter into a license agreement with me as owner of the patent.

Q. So that instead of you taking the patent and their retaining its use, you were to buy the patent? A. Yes, sir.

Q. On December 28, had you agreed with Mr. Dawes what 3 you should pay?

A. We had discussed the price, but we had made no absolute agreement.

BY MR. NOBLE:

Q. As to the price? A. Yes, as to the price.

MR. GROSVENOR: That option you testified was in alternative form?

THE WITNESS: Yes, sir.

BY MR. GROSVENOR: 4

Q. It permitted you to buy or to get an exclusive license?

A. Yes, sir.

Q. Was the amount which you were to pay considered?

A. Yes.

Q. And discussed? A. Yes, sir.

Q. No agreement was reached? A. No, sir.

Q. When did you first reach an agreement as to what should be paid? A. Some time in March.

Q. After this meeting with Mr. Torrance?

A. Yes, because when Mr. Terrance signed that memorandum of agreement to enter into a license agreement, he referred me to Mr. Dawes regarding the details as to the purchase of the patent.

Q. Was Mr. Dawes the officer who determined on the amount you should pay for the patent? A. Yes.

Q. You had no discussion with any other members?

A. No, I do not recall discussing the price of the patent with any other member of the firm.

Q. Did you tell Mr. Dawes on December 28, or previous to that time, that it was your intention, if you obtained control of the patent, by either of those methods allowed you by the option you have described—did you tell him that it was your intention to obtain agreements from the other manufacturers of sanitary enameled ware to take licenses from you?

A. Well, I don't recall whether I did or not. I do not remember it.

Q. Did he ask you why you wanted an option.

THE WITNESS: In what connection? I do not understand your question.

Mr. GROSVENOR: Let me make it clear: Here is a patent which you testified was a valuable patent and which was owned by the Standard Sanitary Manufacturing Company. You had been to see the officers of the Company previously to December a number of times, you testified, with the object of inducing them to give you control of the patent. Did you tell them what your plans were?

A. I don't recall that I did. Of course, I wanted to get an option before I went ahead and did a lot of work that might not have amounted to anything in the end.

Q. You testified yesterday that before you left Detroit that you discussed with Mr. Colquitt and your wife your plans. Now, when you went to Mr. Ahrens in August, 1909, and asked him about giving you control of the Arrott patent, did you discuss with him your plans?

A. Why, my conversation with Mr. Ahrens was very short. He turned me over to Mr. Dawes, saying that it was a manufacturing question and to talk to him. I did not seem to make much impression on him at that time.

Q. Did you tell him of your experience in the electrical business? A. Not that I recall.

Q. Did you tell Mr. Dawes? A. Yes, from time to time. 1

Q. That is from time to time before December?

A. Yes, sir.

Q. Did you tell him how the business was carried on under licenses under patents? A. Yes.

Q. Did you show him the various contracts?

A. I don't recall showing him the contracts at that time.

Q. You discussed, any way, the outlines of the arrangement? A. Yes, sir.

Q. Did you tell him that you had in mind to get up the same sort of license agreements under the Arrott patent?

A. Yes. 2

Q. And to get the other manufacturers to enter into such an agreement?

A. Yes, including his own Company, of course.

Q. And all the others? A. Yes.

Q. Now, when you saw Mr. Torrance in March and he signed, did you tell him at that time about your electrical experience?

Mr. NOBLE: I object to the question stating "he signed."

Mr. GROSVENOR: I mean that he signed for the Standard Sanitary Manufacturing Company. 3

Mr. NOBLE: I object on the same grounds.

Q. You testified yesterday that Mr. Torrance had signed in March for the Standard Sanitary Manufacturing Company to execute an agreement with you?

A. He signed an agreement to enter into a license agreement.

Q. Well, did you at that time, tell him of your experience prior to that time in the electrical business?

A. I do not recall having any detailed conversation with Mr. Torrance in regard to the subject, because he was not interested. The matter in 1908 had been taken up with Mr. Dawes and Mr. Torrance, and as I recall it Mr. Torrance was not interested in the proposition at all. They did not want to lose control of their patent or become so closely associated with the other companies. I imagine— 4

Mr. NOBLE: Only testify to what you know.

Q. Did you acquaint Mr. Torrance with your experience in the electrical business, that is the manner in which that

1 business was carried on, that is with reference to the licenses under patents?

A. I did in a small way, but Mr. Torrance never entered into the subject fully with me.

Q. Shortly after this meeting, though, that you had with him in March, he was appointed on the Price and Schedule Committee on March 30, in New York City? A. Yes.

Q. Mr. Wayman, the important difference between the Seamless Steel Bath Tub Company's ware and that of the enameled ware manufacturers who are the defendants in this suit is this: The Seamless Steel Bath Tub Company made tubs
2 the body of which was of steel, and all the other manufacturers made tubs of enameled ware, the body of which was cast iron?

Mr. NOBLE: You mean the defendants here?

Mr. GROSVENOR: Yes.

THE WITNESS: Of cast iron?

Mr. GROSVENOR: Yes, that is the actual difference between the articles, is it not?

A. Yes, sir; with reference to the body of which the tub was made.

Q. By the body I mean— A. (Interrupting): The shell.

3 Q. The shell which is, of course, the—

Mr. HEATH: The base.

Mr. GROSVENOR: Yes, the base of the whole structure.

A. Yes.

Q. When you saw Dr. Duryea in May, and he signed the agreement with you and the letter which you attached thereto, and which is now Petitioner's Exhibit No. 14, did you tell him what other manufacturers had entered into arrangements with you?

Mr. NOBLE: I object to the question. There is no
4 evidence in this case that Dr. Duryea signed any agreement with Mr. Wayman. Mr. Wayman stated that he granted a license to the Colwell Lead Company, after having a conversation with Dr. Duryea in respect thereto. I object further on the ground that Mr. Honeyman, who is counsel for Dr. Duryea, is not present, and has not been notified of the examination of this witness in respect to the Colwell Lead Company.

Mr. GROSVENOR: In reply to that question I should

state that all of the counsel for the defendants know of these hearings. They have notice of each hearing, and Mr. Honeyman was here yesterday, and knows that the hearing is going on today. 1

Mr. NOBLE: I instruct the witness that he need not answer the question in the form in which it is presented.

Mr. GROSVENOR: What is the question now?

The stenographer then read the last question.

THE WITNESS: Well, acting on instructions from counsel I would not like to answer.

Q. Do you refuse to answer? 2

A. Counsel says that I should not answer.

Mr. NOBLE: If counsel for the Government desires an answer to the question, he can proceed in the regular way to get one by order of Court.

Q. Are these manufacturers today paying you for the use of the patent under the license agreements which they made with you?

Mr. NOBLE: Do you mean his licensees?

Mr. GROSVENOR: I mean the 16 corporation defendants in this case. 3

A. Some of them are and some of them have not paid up to date.

Q. Is the Standard Sanitary Manufacturing Company one of the companies that is paying you today?

A. The Standard, as I recollect, are a little in arrears. I could not testify correctly as to each of the companies from memory.

Q. The agreement went into effect on June 1st, 1910, did it not?

THE WITNESS: That is between the licensed manufacturers and myself? 4

Mr. GROSVENOR: Yes.

A. Yes.

Q. Did the Standard Sanitary Manufacturing Company pay you for the month of June at the rate of $5 per day for every furnace which they operated during June? A. Yes.

Q. And did they so during July? A. Yes, sir.

Q. And for August? A. Yes.

A. I understood some time ago they started up under the name of the Pennsylvania Sink Company.

Q. That is a very small Company, though?

A. Yes, two furnaces; they make sinks, though, and some lavatories. The Louis Lipp Company have, I think, four. I think that is what Mr. Weil told me when I saw him. The Washington Iron Works have two. The Rundel Manufacturing Company of Milwaukee have four.

Q. Do they make bathtubs?

A. I think they do, yes, and small ware; that is the concern whose output is taken chiefly by Sears-Roebuck Company of Chicago, whom I understand are interested in it. Then, the Jones-Holloware Company and Pheil of Columbus —I don't know how many furnaces they have. The companies I just recited previously including the Iron City and Kohler would total 52 furnaces, and I think between the Jones-Holloware Company and Pheil that would make a total of about 55 furnaces.

Mr. GROSVENOR: That is all I have.

EXAMINATION BY Mr. HEATH:

Q. The essential difference between the steel bathtub and the ordinary iron bathtub is that the steel is drawn, is it not?

A. Yes, and the iron tub is cast.

Mr. NOBLE: If I have any other questions, I will ask them when the Record is completed.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of evidence was then adjourned until Monday morning, April 24, at the Post Office Building, Pittsburgh, Pennsylvania.

IN THE CIRCIUT COURT OF THE UNITED STATES, 1
FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY.

Pittsburgh, Pennsylvania, April 24, 1911. 2

Pursuant to adjournment, the taking of evidence on behalf of the Government, in rebuttal, was resumed, this 24th day of April, 1911, at the Post Office Building, Pittsburgh, Pennsylvania, before C. John Beeuwkes, Esq., Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., 3
MARSHALL A. CHRISTY, Esq.,
on behalf of the Standard Sanitary Manufacturing Company and others.

FREDERICK D. COOK, a witness of competent age, produced on behalf of the petitioner, in rebuttal, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Cook, what is your residence and occupation? 4

MR. NOBLE: Counsel for the defendants objects to the testimony of witnesses in rebuttal being taken by the Government, for the reason that the defendants have not completed the taking of their testimony. The defendants desire to call other defendants, for whom the defense is set forth in their answer, to prove such defense and to disprove the testimony adduced by the Government in this case. This would involve calling the various defendants who

have not yet gone on the stand and examining more fully the defendants who have gone on the stand. It has been impossible to get the testimony of the defendants who have not taken the stand for the reason that the matters, transactions and things laid in the indictments found in Detroit on or about December 7, 1910, and the matters, transactions and things complained of in this suit are the same or substantially the same, and the defendants have not been willing to take the stand voluntarily and testify fully and freely of their knowledge of the matters, transactions and things involved in this case, for fear that the testimony that they would give might tend to incriminate them. The same thing is true of the defendants who have been on the stand and who were partially examined, and their further testimony is desired to complete the testimony in this action. Further than that, testimony of numerous workmen in the other plants of the licensed manufacturers is yet to be taken. The statements of those witnesses have been taken by counsel for the defendants and he is prepared to examine them as soon as an opportunity can be afforded to put them on the stand. He offers to prove by them the same state of facts which has been proven by the other workmen for other manufacturers whose testimony has already been taken. The defendants further desire to call other jobbers than those who have taken the stand, to prove the same facts in general as to which evidence was offered at the hearing which took place in Pittsburgh on Wednesday, the 19th of April, 1911. The defendants also desire to call witnesses in Detroit in corroboration of the testimony already given by the defendants and offer to prove by their testimony the facts already shown in the testimony of Mr. Wayman and others. The defendants desire me to state, and I do state, that they feel that the situation in which they are placed is one which is unfair to them; that it is inequitable that in a court of equity they should not be allowed an ample opportunity to present their defenses and their proof fully and freely without fear that by defending their personal and property rights they may be called upon to testify about matters, transactions and things which are laid in the indictments in Detroit, before

mentioned, and they pray that the Court will give them 1
an opportunity to present their defense suitably and fully in the belief that by so doing they can establish their defense, as set out in their answers and disprove the evidence offered by the Government, in so far as it may affect them adversely.

At a convenient time the Court will be asked to grant the defendants the opportunities here prayed for.

Mr. GROSVENOR: In reply to the statement of counsel for the defendants, counsel for the Government refers to the record which will show that the defendants have had ample opportunity to prove their case, to wit, from 2
December 21, 1910, until and including April 22, 1911.

BY Mr. GROSVENOR:

Q. Now, Mr. Cook, what is your residence and occupation?

A. Blairsville, Pennsylvania. I am president and manager of the Blairsville Enameled Ware Company.

BY Mr. NOBLE:

Q. President and manager? A. Yes, sir; factory manager.

BY Mr. GROSVENOR:

3

Q. That company manufactures sanitary enameled iron ware? A. Yes, sir.

Q. Of all kinds, that is, bathtubs, sinks and lavatories?

A. Yes, all kinds.

Q. How long have you been engaged in the enameled ware business with the Blairsville Enameled Ware Company?

A. Three years.

Q. Before that were you engaged in the Sanitary enameled ware business A. Yes, sir.

Q. Where?

A. I was manager at McCrum-Howell's, at Uniontown. 4

Q. How long were you there? A. I was there three years.

Q. And before that—

A. (Interrupting): No, that was two years.

Q. And before that?

A. Before that I was manager of the Kellogg-McCrum-Howell Company at Blairsville.

Q. That factory burned down?

A. That factory burned down.

1 Q. How long were you with the Kellog-McCrum-Howell Company?

A. I was with the Kellogg-McCrum-Howell Company from the time they took possession of that plant. I was at Blairsville as mixer for the Champion Manufacturing Company from 1900 to 1903; then the Kellogg-McCrum-Howell Company took charge of that plant.

Q. And you worked with them until it burned down?

A. I worked with them until it burned down.

Q. In what capacity?

A. First as mixer and then as manager.

2 Q. You were mixer for what company before the Kellogg Company? A. The Champion Manufacturing Company.

Q. Is that still in existence? A. No, sir.

Q. Did they manufacture sanitary enameled ware?

A. Yes, sir.

Q. All these companies did? A. Yes, sir.

Q. Before that you were in the Sanitary enameled ware business? A. Yes, sir.

Q. Where?

A. With A. Weiskittel & Son Company, Baltimore.

Q. How long? A. One year.

3 Q. And before that?

A. I was with the Victor Manufacturing Company at Alliquippa.

MR. NOBLE: How do you spell that?

THE WITNESS: A-l-l-i-q-u-i-p-p-a.

BY MR. GROSVENOR:

Q. Did they make enameled ware?

A. They made bathtubs.

Q. How long were you with them?

A. I think it was three years.

4 Q. Was that your first experience in the enameled ware business?

A. That was my first experience in the manufacture of cast iron plumbers' ware.

Q. You mean sanitary cast iron ware?

A. Sanitary cast iron ware, yes.

Q. How many years does that make in all in which you have been engaged in the making of sanitary enameled iron ware, fifteen years or more? A. No, about 13 to 14 years.

Q. You are familiar with the different kinds of dredges used in making of sanitary enameled iron ware? 1

A. Yes, sir; not all of them, but some of them.

Q. You are familiar with the Arrott dredger?

A. Yes, sir.

Q. And you are familiar with the long-handle hand dredge? A. Yes, sir.

Q. And also with the short-handle dredge?

A. Yes, sir.

Q. In calling one dredge a short-handle dredge and the other a long-handle dredge I call your attention to the fact that the long-handle dredge is usually supported by a weight; you have used such a dredge? A. Yes, sir. 2

Q. Can you make good sanitary enameled iron ware with the long-handle hand dredge? A. Yes, sir.

Q. And with the short-handle hand dredge?

A. Yes, sir.

Q. And with the Arrott dredger? A. Yes, sir.

Q. In comparing these three dredges it is a fact, is it not, that the Arrott dredger is the more convenient tool?

A. Yes, sir; it is more convenient; yes

Q. Is the Arrott dredger a necessity

Mr. NOBLE: I object to the question on the ground that it is not sufficiently definite. Necessity for what? The witness has not shown himself qualified to answer a narrow question like that by what you have asked him. 3

Mr. GROSVENOR: Read the question please.

The stenographer then read the last question.

A. No, sir.

Q. Would you say that the proper description of a dredge is to call it a tool used in the manufacture or in the making of sanitary enameled iron ware?

A. Yes, I think the word "tool" would correctly describe it. 4

Q. You have had experience in the mixing of powder?

A. Yes, sir.

Q. And the making of slush? A. Yes, sir.

Q. Is the making of the enameling powder an important element in the business? A. Very important.

Q. Is the making of the slush an important factor in the business? A. Very important.

1 Q. Are those the two most important requisites, namely, to get a good enamel and also a good slush coat?

Mr. NOBLE: I object to this line of questioning on the ground that it is immaterial, incompetent and irrelevant.

Mr. CHRISTY: This question is further objected to as leading.

Mr. GROSVENOR: Will you answer it?

THE WITNESS: Will you kindly repeat it?

The stenographer then read the last question.

2 A. Yes, after you had secured a good casting.

Q. Now, during the 13 or more years that you have been engaged in the enameled ware business, have there been improvements adopted by the manufacturers from time to time in the methods of making the ware? A. Yes, sir.

Q. Have there been changes in the powder? A. Yes, sir.

Q. And in the manner of application of the enamel, that is, whether it be in the wet or the dry form?

A. Well, since I have been in the business the application of the powder has always been in the dry form.

Q. Prior to 15 years ago do you know how it was ap-
3 plied?

Mr. NOBLE: I object to the question. The witness has said that ever since he has been in the business it was applied in the dry form.

Q. Well, you have made a study of the making of enameled ware, haven't you? A. Yes, sir; I have had to.

Q. And of the methods pursued by manufacturers since it has been made? A. To some extent.

Q. Now, are you able to state whether or not the enamel was applied in the dry or liquid form 15 or 18 years ago?

4 Mr. NOBLE: I object on the same grounds as before stated, and further because the witness has stated that he has merely made a study of the matter to some extent. It is not fair to ask him about questions which he has had no experience in.

A. All I know in regard to the liquid process is that since I have been in this business I was advised by parties who had been in it a great many years that when they started in the business the enamel was applied in a liquid

coat, but afterwards they changed to a dry coat because it was more rapid and gave them a better piece of ware. 1

Q. Can you name any important change in the making of the enameling powder within your experience?

Mr. NOBLE: Objected to on the ground that it is incompetent, immaterial and irrelevant.

A. The greatest change that I know of is in the introduction of the oxide of tin as a whitener.

Q. What purpose does that serve?

A. Why, it makes the enamel white, just exactly as lime put in water will make whitewash.

Q. How many years have they used oxide of tin? 2

A. I cannot give you the exact dates, but I believe the first firm to use it was the Ahrens & Ott Company of Louisville, and I think it was in the early 90's that they introduced it.

Q. Now, is the ware that was made ten years ago equal in quality to the ware that is made today?

A. As far as appearances go, the ware was equal then, I think to what it is today.

Q. But there have been improvements in the art of making it, is that right?

A. Yes, there have been improvements in furnaces, in enamels and in slushes. 3

Q. And also in dredges? A. And also in dredges.

Q. And the improvement in the dredges to which you refer is in the use of a pneumatic or electric dredger as compared with the hand dredge?

Mr. NOBLE: Objected to.

A. The introduction of a power dredger of any sort as compared with the hand dredge.

Q. Are you able to state from your consideration of the improvements in the art of making enameled ware what per cent. of improvement is due—that is, in the manufacture—to the introduction of the power dredger? 4

Mr. NOBLE: Objected to on the ground that it is purely speculative and calls for an opinion which in the nature of things must be a wild guess on the part of the witness.

Mr. GROSVENOR: Not at all. This witness has studied the subject and has been in the business and

observed the art of manufacture. Certainly he can testify as to what cause was instrumental in bringing about improvements.

A. My opinion is that about 25 to 30 per cent. of the improvement is due to the introduction of power dredgers.

Q. And what per cent. of the improvement which has occurred in the manufacture of enameled ware during the period of your experience is due to other causes than the introduction of the power dredger?

A. The other causes of improvement come under the head of improvement in slushes, improvement in enamels and improvement in furnaces.

Q. And those aggregate about how much?

A. Those aggregate the balance, from 70 to 75 per cent.

Q. Do you know Mr. Homer F. Staley? A. Yes, sir.

Q. Have you discussed this subject with him, namely, the improvements in the making of enameled ware as made in the last ten or fifteen years?

A. Mr. Staley visited me at Blairsville some time ago and the matter was up for discussion between us and I stated to Mr. Staley at the time—

Mr. NOBLE: I object to this on the ground that it is utterly immaterial, incompetent and irrelevant. It is hearsay and is an attempt to raise a collateral issue which is not involved here in any way apparently.

Mr. GROSVENOR: Mr. Staley has been a witness for the defendants in this case, and the question that is addressed to this witness has the proper bearing on his testimony. Go ahead.

A. (Continuing): I stated to Mr. Staley at the time that I thought that about 25 per cent. of the improvement in enameled ware was due to the introduction of improved dredgers.

Q. Did he express any dissent from that?

A. He did not express any dissent, but he did not say positively that he agreed with me.

Q. Is the inspection of the product of manufacturers which is made by the manufacturers, of their ware, before it is put on the market—I say, is that inspection any more careful today that it was ten years ago?

Mr. NOBLE: I object to the question except in so

far as it is the witness' own knowledge and his own particular experience. 1

A. I think and my experience is that the gradation of the ware depends very much upon the price.

Q. The price in the market?

A. The price in the market, that as the price increases the ware is graded more carefully and as the price goes down they are not so particular in grading their ware.

Q. During the last three years during which time you have been president and manager, I understand, of the Blairsville Enameled Ware Company, have you used the hand dredge the larger part of the time? 2

Mr. NOBLE: Objected to as leading.

A. I used the hand dredge for about 18 months and still use it occasionally.

Q. Did you have any difficulty in getting enamelers to use the hand dredge? A. No, sir.

Q. Does the character of the dredge, whether it be hand or pneumatic, make any difference as to the weight of the casting?

THE WITNESS: The weight of the casting? 3
Mr. GROSVENOR: Yes.

A. No, I don't think it does. You mean the weight of the casting after it is enameled?

Q. I mean this, by the casting I refer to the cast iron tub before the enamel is placed on it. When you changed from a hand dredge to a power dredger do you change the weight of the casting or do you use the same casting for both dredges?

A. I use the same casting for both dredges.

Q. Is there any material difference in the saving of the powder by using the hand dredge as compared with the power dredger or in the use of the power dredger as compared with the hand dredge? 4

A. I think one is apt to use a little more powder by use of the power dredger.

Q. Why is that?

A. Well, it goes on a little quicker and more easily and the casting will only take powder while it is hot, and the enameler generally puts on what powder he can on the first dredge, and

of course when you use a power dredger it goes on more rapidly and the casting will take more.

Mr. GROSVENOR: That is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Cook, you say that in your plant, which I understand is the Blairsville Enameled Ware Company—

A. Yes, sir.

Q. That upon the question of inspection when the prices are high you inspect more carefully and grade the ware a little differently from when the prices are low; is that correct? A. Yes, sir.

Q. How long has that been your practice, throughout your connection with the company? A. Yes, sir.

Mr. GROSVENOR: I don't think that was an exact statement. I don't think he confined his answer to my question to the Blairsville Company.

Mr. NOBLE: I asked him to confine his answer to his own experience. You are speaking from your own experience, aren't you?

A. From my own and from my general knowledge of the other manufacturers.

Q. But you are speaking of what you do at Blairsville when you say that? A. Yes, naturally.

Q. Now, Mr. Cook, speaking of the power dredger which you referred to, you say that you can get the enamel on the article which is being enameled more quickly? A. Yes, sir.

Q. Is it not a fact that it is necessary to get the powder on the tub or the articles being enameled while they are very hot in order to have it adhere properly?

A. It must be at the proper heat. I do not understand the word "adhere."

Q. In order to make it stick to the casting?

A. You get the tub in the furnace to a red heat and take it out and throw it on the table and put powder on as long as you can, as long as it will take the powder.

Q. By the word "adhere," I meant the same as you meant by holding the powder, in order to get it to stick properly; is that what you meant? A. Yes, sir.

Q. It is an advantage to get all over the article each time you take it out of the furnace, is it not? A. Naturally.

Q. So that the casting does not lose its heat and have to go back in the furnace? 1

A. It always has to go back in the furnace.

Q. So it does not have to go back in the furnace before you complete the particular coat you are putting on?

A. It always has several coats.

Q. After an article has been heated to a cherry red heat or thereabouts, the enameler takes it out and starts to put on the enameling powder, is that correct? A. Yes, sir.

Q. While the article holds its heat he can put on the enameling powder, is that correct?

A. Yes, while the article holds its heat he can put on the enameling powder. 2

Q. If anything happens to delay him in putting on the enameling powder so he cannot get it all over the article he is enameling, then he must put it back in the furnace again and heat it up, is that correct? A. Yes, sir.

Q. So if I understand you, when talking to Mr. Grosvenor you spoke of one of the advantages of the power dredger as being that you could get powder on more quickly?

A. Yes.

Q. That it went on more rapidly while it was hot?

A. Yes. 3

Q. You were speaking of that in comparison to the old hand method, that is where you used the old long—or short handle dredge and beat the handle? A Yes, sir.

Q. Have you ever enameled a tub? A. Yes, sir.

Q. How many?

A. Well, I think I have enameled probably 50 to 75, maybe more.

Q. It was largely experimental in your doing it?

A. Well, the tubs were salable.

Q. Did you use the power dredger?

A. No, sir; I used the hand dredge. 4

Q. How many years ago was that, Mr. Cook?

A. That was about 1898.

Q. That would be about 23 years ago? A. Oh, no.

Q. About 13 years ago? A. Yes, sir.

Q. Since that time you have been, I suppose, chiefly on the business side of the firms you have been with, you have had more to do with the commercial side of it?

A. Well, I have had charge of the factory.

1 Q. Have you had charge in any of these factories of the sale of the goods? A. No, sir.

Q. Now, if I remember these places, one of your places of employment was at Uniontown, is that correct?

A. Yes, sir.

Q. Whom were you with there?

A. The McCrum-Howell Company.

Q. What years were you there? A. From 1905 to 1907.

Q. What were you doing there? A. I was manager.

Q. What of? A. Of the enameled ware plant.

Q. And you spoke of being with the Champion Company;
2 when was that? A. I went with them in 1900.

Q. You were there the mixer of the enameling powders?

A. Yes, sir.

Q. What did you do at Weiskittel's?

A. I was mixer at Weiskittel's.

Q. You spoke of knowing Mr. Staley, was he there at the same time, at Uniontown? A. Yes, sir.

Q. What was his position? A. Mixer.

Q. Wasn't he also superintendent; didn't he have the title of superintendent?

A. I think he did after I left.

3 Q. Oh, he stayed there after you left? A. Yes, sir.

Q. Did you ever operate the old short-handle dredge?

THE WITNESS: Do you mean personally?

Mr. NOBLE: Yes.

A. Oh, yes.

Q. How long?

A. Well, I have done it occasionally but I never made a practice of it.

Q. You simply took it up from time to time.

A. From time to time, yes.

4 Q. And tried it out for a little while? A. Yes.

Q. How about the long-handle dredge, did you ever operate that?

A. Just at the time I spoke to you of, in '98.

Q. When you made those tubs? A. Yes, sir.

Q. You did that with the long-handle dredge?

A. Yes, sir.

Q. You never used any other dredges personally except the short-handle dredge and the long-handle dredge?

A. That is all.

Q. If you got a heavy casting would that hold heat as long 1
or longer than a light casting?

A. It would hold it longer.

Q. Then, assuming that you have a light casting that is sufficiently heavy to make a good tub or sink or whatever article you are attempting to enamel it is an advantage, is it not, to be able to get over the article quickly while it holds the heat? A. Yes, sir.

Q. If you could get over it quickly you could afford to make it a lighter casting, couldn't you, assuming you had enough iron in it to have it in proper shape?

A. No, I don't think so. If you have a lighter casting it 2
would be cheaper to put on more powder rather than a heavier casting.

Q. So if you had a power dredger you could get over a lighter casting more quickly?

A. Well, you could use the hand dredge a greater number of times?

Q. But you would not have to put it back in the furnace so many times with the power dredger? A. No, sir.

Q. And putting it back in the furnace makes furnace cost, doesn't it? A. Yes, sir.

Q. It makes additional cost to the manufacturer in the 3
use of his furnace? A. Yes, sir.

Q. With the power dredger you can enamel more pieces in the same length of time? A. Yes.

Q. And you can keep your furnace busier? A. Yes, sir.

Q. And you can get more ware out? A. Yes, sir.

Q. And you get better enamel from the same points of heat? A. Yes, sir.

Q. Have you ever made any experiments to determine whether you used more powder with the hand dredge than with the power dredger? Did you ever make any actual calculations yourself?

A. I never made any actual calculations, no. 4

Q. I believe you said, Mr. Cook, that you left the plant at Uniontown which was the plant of McCrum-Howell Company, in the fall of 1907; is that correct?

A. I think that is correct.

Q. Do you know whether it was the fall or spring?

A. It was the fall.

Q. How long were you with the company there after the

1 plant was rebuilt, that was only a few months after the plant was rebuilt, wasn't it?

A. No, it was longer that that. It must have been, I think, over a year.

Q. Well, since you left there you have been with the Blairsville Company, is that correct? A. Yes, sir.

Q. And those are the only two places where you have ever had any experience with power dredgers, is that correct?

A. No, the Kellogg-McCrum-Howell Company at Blairsville used the power dredger.

Q. How much?

2 A. I think they used it pretty steadily for the last two years there.

Q. How many? A. Oh, possibly three.

Q. How many furnaces did they have at that time?

A. At the time of the fire they had three tub furnaces and a small ware furnace.

Q. How many did they have in the new plant?

A. They had eight furnaces.

Q. And how many have you had at Blairsville?

A. We have three at Blairsville.

Q. Since when did you build three?

3 A. We built one in 1907—1908.

Q. And you built the last two recently, haven't you?

A. We built two more early in 1910.

Q. Have you used the power dredger at Blairsville?

A. Yes, we have used the power dredger.

Q. How long did you use it?

A. We have used the power dredger at Blairsville for about eighteen months.

Q. Are you still using it? A. Yes, sir.

Q. How does it work? A. Works all right.

Q. Explain the power dredger, will you, that you are

4 using there?

A. We have used and are using both the electric and pneumatic.

Q. Explain how it works, will you?

A. We have an electric dredge that works either with a flexible shaft or a motor, and at the end of the shaft is a cam that oscillates the dredge sideways very rapidly.

Q. By a series of blows on the sides of the sieve?

A. The dredge is pivoted; it does not touch the sieve.

Q. And it operates against the frame on which the sieve swings? 1

A. Yes, against the handle. It is like that (indicating).

Q. How does the pneumatic dredger operate?

A. We use the Chicago pneumatic tool hammer.

Q. This pneumatic dredger which you have has a pneumatic hammer which strikes a rapid succession of blows, is that the way it works? A. Yes, sir.

Q. And that fits in the end of the handle?

A. It has a socket or a kind of bell in the end of the handle.

Q. And you insert the hammer in that bell and hold it in position and the hammer hammers against the end of that? 2

A. Yes, sir.

Q. You discontinued, as I understood you to say, the use of the hand process except occasionally?

A. Yes, we were using it last week.

Q. Had a break down? A. Yes, had a fire.

Q. You only use it in case of a break down or some extraordinary situation? A. Yes, sir.

Q. Ordinarily you use these automatic dredgers entirely?

A. They are not automatic, but power dredgers.

Q. In other words, when you use the word "power" you mean there is a blow struck by some sort of power? 3

A. Yes, sir.

Q. Rather than by the hand?

A. Yes, we have to furnish the power.

Q. So far as the operator of the dredge is concerned, that is the man who is doing the work, it is automatic?

A. He only has to direct the control of the power.

Q. And guide the sieve over the article which he is enameling? A. Yes, sir.

Q. And he has both hands free for that purpose, hasn't he? A. Yes, both hands free.

Q. Where is your company incorporated? 4

A. Pennsylvania.

Q. You gave an opinion as to the improvements there had been in the manufacture of sanitary enameled iron ware, dividing it up into 100 per cent. and attributing some portion to one thing and some to another? A. Yes, sir.

Q. Did you ever compile any data and conduct any experiments to arrive at that opinion?

A. I never conducted any experiments. I speak from my general knowledge of the business. What I meant was this—

Q. I asked you if you had ever compiled any data or conducted any experiments as a basis of your opinion?

A. My opinion is based on results that I have noticed in the factories.

Q. Mr. Cook, given the same kind of a casting, the same kind of a slush coat, the same kind of enameling powder, you have found it, in your factory, advantageous to use what you have described here as a power dredger, have you not?

A. Yes, sir.

Q. Speaking from a commercial point of view, if you have an opinion on commercial questions, I understood you had nothing to do with the commercial side of it—but speaking from a commercial point, it is better to have the enameled iron ware attractive to the public, is it not? A. Yes, sir.

Q. And the smoother the ware is the more apt the public is to buy it? A. Yes, sir.

Q. Speaking from a commercial point of view it is an advantage to have the enameled article smooth and white, is it not? A. Yes, sir.

Q. And that is one of the objects which you, in manufacturing enameled iron ware seek to obtain? A. Yes, sir.

Q. If you have to stop to put the article which you are enameling back into the furnace before getting it enameled all over after taking it out of the furnace, you are very apt, are you not, to get an uneven piece of ware?

THE WITNESS: When it is finished?

Mr. NOBLE: Yes, the enamel is apt to be thicker in some places than in others?

A. Not with a good operator.

Q. A man using one of these Arrott dredgers can get all over it in one turn?

A. Well, you can with the hand dredge get all over it in one turn.

Q. If it was a large article? A. As large as a bathtub.

Q. Could you get over it as quickly as you could with the Arrott dredger? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM H. LOSE, a witness of competent age, produced on behalf of the Petitioner, in rebuttal, having been first duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lose, will you please state your residence and occupation?

A. Zelienople, Pennsylvania; superintendent of the Iron City Sanitary Manufacturing Company.

Q. You have direct charge of the factory? A. Yes, sir.

Q. How long have you been superintendent of the Iron City plant? A. About five years—six years.

Q. And before that where were you? 2

A. In the foundry, foundry foreman.

Q. There? A. Yes, sir.

Q. How many years have you been engaged in the enameled ware business? A. About twenty.

Q. Where else have you been besides at Zelienople?

A. Chattanooga, Tennessee, with the Cahill Iron Works; Muncie Sanitary Manufacturing Company, at Muncie, Indiana; Blairsville and the Victor Sanitary Manufacturing Company and the Standard Sanitary Manufacturing Company.

Q. All of these companies you have named manufactured sanitary enameled iron ware when you were with them? 3

A. Yes, sir.

Q. And you were engaged in that part of the business?

A. Not in all of them; not with the Standard Sanitary Manufacturing Company I was not.

Q. With the exception of the Standard Sanitary Manufacturing Company you were engaged in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Are you familiar with the various kinds of dredges used? A. Yes, sir.

Q. In the enamel ware business? A. Yes, sir. 4

Q. Have you used the long-handle dredge? A. Yes, sir.

Q. And the short-handle dredge? A. Yes, sir.

Q. And it has been used under your direction?

A. Yes, sir.

Q. Have you used any power dredgers? A. Yes, sir.

Q. Are you able to make good sanitary enameled ware with the hand dredges? A. Yes, sir.

Q. With the long-handle dredge? A. Yes, sir.

Q. And with the short-handle dredge? A. Yes, sir.

Q. Bathtubs and small articles? A. Yes, sir.

Q. Would you call a dredge a tool used in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. The long-handle hand dredge was been supported by a weight where you used it? A. Yes, sir.

Q. And the short-handle hand dredge entirely supported by the workman? A. Yes, sir.

Q. The power dredger is a more convenient tool than the hand dredge? A. Yes, sir.

Q. Is the power dredger a necessity in the making of sanitary enameled iron ware? A. No, sir.

Q. Good sanitary enameled iron ware? A. No, sir.

Q. Is the enameling powder used an important factor?

A. Very.

Q. Is it also important to get a good slush coat?

A. Yes, sir.

Q. Is the character of the furnace an important factor?

A. Yes, sir.

Q. And the components which make up the pig iron?

A. Yes, sir.

Q. And the furnace in which is made the enameling powder, is the character of that furnace important?

A. Yes, sir.

Q. Have there been improvements in the art of making enameled ware during the time you have been in the business? A. Yes, sir.

Q. Improvements in the enameling powder?

A. Yes, sir.

Q. And in the making of the slush? A. Yes, sir.

Q. And in the character of the furnace? A. Yes, sir.

Q. And in the character of the pig iron?

A. Yes, sir; but there has not been the advancement that has been made in the others.

Q. There have been distinct advances made in the others?

A. Yes, sir.

Mr. NOBLE: Don't lead the witness. Let the witness testify himself.

Q. There have been improvements in the character of the dredge used? A. Yes, sir.

Q. Now, taking together all these improvements in the different parts or branches of the business, what percentage

of improvement will you attribute to the improvement brought about by the use of the Arrott dredger? 1

Mr. NOBLE: I object to the question on the ground that it is purely guesswork on the part of the witness. No foundation has been laid for the witness expressing an opinion on the question of these percentages.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

A. I would not care to hazard an opinion on percentage. There is a distinct advantage, though.

Q. Is it a distinct advantage? A. Yes, sir. 2

Q. That is the power dredger?

A. Yes, sir; my answer is not on the power dredger, but on the improvement—that is the powder and the slush, as to percentage, that is the way I understood it. As applied particularly to the dredger, is that the question? I don't understand it that way.

Q. I understood you to say that the power dredger is an advantage over the hand dredge?

A. I did not understand it that way.

Q. Well, is the power dredger an advantage over the hand dredge? A. As a convenience, yes. 3

Q. Now, comparing the relative advantage of the power dredger over the hand dredge and the advantages obtained by the other improvements that you have named, are you able to state of all the improvements what percentage the power dredger is?

Mr. NOBLE: Objected to.

A. As I said before, I would not hazard a percentage. I would only say that there is a distinct advantage in the accessories that you have named, that is the furnace and the slush and the powder. 4

Q. Did you have any difficulty in getting enamelers to work with the hand dredge? A. No, sir.

Q. Did you ever have any difficulty? A. No, sir.

Q. You changed the weight of your castings when you changed from the hand dredge to a power dredger?

A. No, sir.

Q. Or when you changed from a power dredger to a hand dredge? A. No, sir.

Q. Is there any material difference in the amount of powder used between the hand dredge and the power dredger? A. Yes, I think there is.

Q. With which do you use the most powder, the hand dredge or the power dredger? A. The power dredger.

Q. Why is that?

A. Well, it will distribute it somewhat faster and the operator is not so particular about the amount of powder that is put on in excess, by reason of the fact that he has not got to put it by reason of any effort on his part, that is with the power dredger.

Q. Was the enameled ware manufactured ten years ago on an average as good as the enameled ware made today?

A. I think so.

Q. Was the inspection ten years ago as particular as it is today? A. Yes and no.

Q. What do you mean by that answer?

A. Well, it depends on the conditions of trade as to inspection.

Q. If prices are high the inspection is more close?

A. No, sir.

Q. Then, please explain what you mean?

A. It is the other way, just the opposite, in my experience; when business is good there is more demand and the inspection is not so critical.

CROSS EXAMINATION BY MR. NOBLE:

Q. Then, at the Iron City plant, as I understand you, when there is a great deal of business going on and prices are high, the inspection is not so drastic as it is when prices are low, is that correct? A. I did not say that.

Q. Well, you are connected with the Iron City plant, aren't you? A. Yes, sir.

Q. And you have been there how long?

A. Going on eleven years.

Q. And you in your answer to Mr. Grosvenor's question as to inspection naturally had in mind your experience in the Iron City plant, did you not? A. Yes.

Q. Now, the usual run of the kiln at your plant you sell it to the jobber, is that correct? A. Yes, sir.

Q. And he does the grading calling it first or second, or whatever he wants to call it? A. I don't know.

Q. But you sell it as it runs in the kiln to the jobber? 1
A. Yes, sir.
Q. That is correct? A. Yes, sir.

BY MR. CHRISTY:

Q. Did you say you have been eleven years at the Iron City plant? A. Yes, sir.
Q. Where were you before that? A. Chattanooga.
Q. Tennessee? A. Yes, sir.
Q. What kind of a dredge were they using there?
A. A hand dredge.
Q. You never used the power dredger before you went to the Iron City plant? A. No, sir. 2
Q. You never saw one before that time? A. No, sir.
Q. You say you are not using the power dredger at the Iron City now? A. No, sir.
Q. When did you use one?
A. We used one for about two years.
Q. About when was that?
A. Well, within three months ago.
Q. That is you used the power dredger until about three months ago? A. Yes.
Q. Then you changed to the hand dredge? A. Yes. 3
Q. That is right, is it? A. Yes, sir.
Q. Was that power dredger an Arrott dredger?
A. No, sir.
Q. Was it a pneumatic dredger? A. No, sir.
Q. Did it sieve the enamel through by rapping the dredger? A. No, sir.
Q. It did it by shaking? A. Yes, sir; a positive motion.
Q. Then you yourself never had any experience with a dredger that sifted the enamel through by rapping?
A. Yes, I saw one worked.
Q. You never had any experience with it?
A. We had one, yes. 4
Q. That is a pneumatic dredger? A. Yes, sir.
Q. How long did you use that?
A. Two or three weeks.
Q. That was only experimental? A. Yes, sir.
Q. So all your testimony here as to a power dredger means simply that shaking dredger which you used and described about three months ago, is that right? A. Yes.

1 By Mr. Noble:

Q. You said you were with the Standard Sanitary Manufacturing Company at one time? A. Yes.

Q. You were pattern maker there, were you not?

A. Yes, sir.

Q. You said you were with the Victor Company at Blairsville; what was your business there?

A. Superintendent.

Q. What of?

A. Of the whole plant, of the enameling ware department.

2 Q. You had charge of the workmen? A. Yes, sir.

Q. You had nothing to do with the enameling itself, but just general supervision? A. Yes, sir.

Q. What was your position at Muncie?

A. Pattern maker and foreman of the foundry.

Q. You had nothing to do with the enameling business there? A. No, sir.

Q. At Chattanooga, with the Cahill Iron Works, what was your position? A. Pattern maker.

Q. And up until six years ago you were employed in the foundry of the Iron City Works? A. Yes, sir.

3 Q. Since then you have been in general charge of the factory? A. Yes, sir.

Q. As superintendent of the men? A. Yes, sir.

Q. You have not done any enameling during that time?

A. A very little, not much.

Q. Your business has not been that? A. No, sir.

Q. Just an occasional piece, you may have tried?

A. Yes.

Q. How do you employ your men down there at the Iron City Works, Mr. Lose? The men who work in the enameling room, I mean? A. Piece workers.

4 Q. Have you or not many times taken learners down there who had been trained in other factories?

A. Not often.

Q. Do you recall any circumstances where men have applied for jobs who worked at other places? A. No.

Q. Do you recall instances where the men have left shortly after coming? A. No.

Q. Could you say that there have been such instances?

A. Not that I know of. I have known of them coming there and leaving. 1

Q. Do you employ the men down there or does the enameling foreman? A. The enameling foreman.

Q. You would not personally know about that question that I was asking about? A. Yes, I would.

Q. Well, you did not engage them yourself?

A. No, but I would know about it.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: The Government's case is closed, with the understanding that after the Record has been completed by the stenographer we can have another meeting at which counsel may agree upon changes in the Record, and at which counsel for the Defendants may ask Mr. Wayman such further questions as seem advisable. 2

Adjourned.

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1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, N. Y., Post Office Bldg.,

May 8, 1911.

Pursuant to notice the taking of evidence on behalf of the Defendants, was resumed this eighth day of May, 1911, at the Post Office Building, New York, before C. John Beeuwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Manufacturing Company, *et al.*

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled, as per stipulation of counsel, for further examination by Mr. Noble, testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. Mr. Wayman, I have asked you heretofore some questions relative to the arrangements made by you, oral con-
4 tracts made by you, with Mr. Collins of Toledo, representing the National Supply Company. I call your attention to a letter, it being Petitioner's Exhibit No. 248, appearing in Volume 1 of the Record on pages 434 and 435, purporting to be a copy of a letter written by the Grosswiller Supply Company of Toledo, Ohio, to you, and particularly direct your attention to the sentence "The writer understands the National Supply Company of this City are getting goods from all the licensed manufacturers and Mr. Collins positively

declares upon his word of honor that he has not signed the contract of the licensors." The National Supply Company and Mr. Collins there referred to are the same persons that I have just asked you about, are they not? A. Yes, sir. 1

Q. What were the relations between you, as licensor, and Mr. Collins?

A. Well, on September 15, Mr. Collins agreed with me over the telephone that he would sell only licensed ware and that he would do everything provided in the license agreement except signing it, and he also asked me not to say anything about it to the other jobbers.

Q. So, while the statement is true that he had not signed the contract with you, you and he did have an oral contract? 2

A. Yes, sir.

Q. Embodying the terms of the license agreement and the jobber's license agreement? A. Absolutely.

Q. In Volume 1, pages 496 and 497, you were asked some questions relative to the schedules which formed part of the license agreement between you and the licensed manufacturers, and you recited in your answer various discounts and other details and instruments which were attached and then on page 497 you were asked, "Was there anything else attached to that license agreement other than this jobber's agreement?" To which you replied, "No, not that I know of." Now, I would like you to explain more fully what you meant by your answer which I have just read? 3

A. Well, the question came up as to what the prices were, and I explained the general outline as to how they were being fixed and called attention to the fact that there were a great many figures, and that when those prices were completed they were to be considered part of the agreement; they were attached to the agreement at that time.

Q. Then, there were attached to the license agreements sent to the various manufacturers what papers, in each instance? 4

A. The jobber's license agreement, with the notation thereon showing how the prices were being figured in the schedules that I was getting up.

Q. So that that included the differentials and also the price sheets to which you have referred, is that correct?

A. Yes, yes.

Q. There were thirty-odd thousand calculations, were there not, which had not all been completed at that time?

A. Well, that is approximately what I estimated. I presume there were more than that.

Q. I show you now Petitioner's Exhibit No. 287, it being a letter dated August 25, 1909, and marked "Copy," and addressed "Dear Sir," with a blank space left for the signature and the word "Commissioner" under it, and I ask you whether that letter had anything to do with the licenses which you subsequently granted to the various manufacturers, or with any of your efforts to procure the options upon the patents upon which you later granted licenses?

A. No, sir.

Q. Had the letter anything to do with the plans which you later put into operation? A. No, sir.

Q. Or your efforts to bring about the accepting of licenses from you by the manufacturers of sanitary enameled iron ware? A. No, sir.

Q. I now call your attention to Petitioner's Exhibit No. 288, it being a letter upon the letterhead of the Sanitary Enameled Ware Association, dated December 18, 1909, and addressed to Mr. J. A. Kelly, and signed by E. L. Wayman, Commissioner. It is headed "Special Meeting." Did that letter have relationship to licenses later granted upon the Arrott and other patents to the various manufacturers?

A. No, it did not.

Q. Or to any negotiations or efforts that you were making to get options on those patents and later grant licenses?

A. No, sir.

Q. You say in the first paragraph that certain market conditions have remained unchanged and that it is deemed advisable to call a special meeting for Wednesday, the twenty-second, "in order that closer working arrangements than have existed in the past may be discussed." What were the "closer working arangements" there referred to?

A. Well, it had to do with costs. I had been considering having a cost expert, because of the discrepancies between the various manufacturers as to costs, to come and give a talk on costs. I remember, in particular, the next day after the meeting of December 1st, talking at lunch with Mr. Guthrie of the Clymer Manufacturing Company, and Mr. Kelly of the Iron City Manufacturing Company and going into the question of costs very thoroughly—

Q. (Interrupting): You mean the manufacturing costs?

A. Yes, sir.

Q. That was one of the subjects discussed at one of the meetings? A. Yes, sir. 1

Q. And you had been looking into the question, you say?

A. Yes, sir.

Q. And had been contemplating having a cost expert come there and give a talk on costs?

A. A general talk on costs, yes, sir.

Q. Did that have anything to do with the license agreements you were working on? A. No, sir.

Q. You had not obtained the option on the Arrott patent, had you? A. No, sir.

Q. Now, you say "It is highly important that you attend this meeting and assist in some action that will tend to maintain the market"; did the meeting which was called ever take place? A. No, sir. 2

Q. Was there any discussion between the persons to whom you sent this letter as to closer arrangements or the maintaining of the market? A. Not that I know of.

Q. Did any of the matters referred to in this letter have anything to do with your getting options on the Arrott and other patents or your license agreement? A. No, sir.

Q. I now call your attention to Petitioner's Exhibit No. 289, it being a paper dated January 18, 1910, not addressed to anyone, but with a blank space for a signature, and under it the word "Commissioner," in which it is said: "Some of the manufacturers report that business is exceptionally dull and inquire if market prices are being maintained." What is meant there by "market prices"? Is that the prices of the several manufacturers? 3

A. Well; general prices; there were no definite prices, but there were published prices.

Q. Was there any agreement between the manufacturers as to what were market prices? A. No, sir.

Q. In other yords, that means whatever the manufacturers could get? A. Yes, sir. 4

Q. Without reference to any other manufacturers?

A. Yes, sir.

Q. It is said here: "This situation is true generally due to the bad weather existing and the taking of inventories by the jobbers. If your Company is experiencing a slack condition at this time, I trust you will not try to stimulate the volume of your business by any weakening in prices but await the natural order of things. * * * " Now, did

1 that letter have anything to do with your plans to give licenses? A. No, sir.

Q. Or anything to do with your procuring of these options? A. No, sir.

Q. It was written to the manufacturers to get general expressions of opinion as to market conditions, is that correct? A. That is it exactly.

Q. And did you get replies from various manufacturers as to that? A. Yes.

Q. And when you got those replies, did you embody them in a letter which you sent out to the members of the Associa-

2 tion? A. Yes, sir.

Q. I now show you Petitioner's Exhibit No. 290, it being a letter dated January 22, 1910, and headed "Market Conditions," and I ask you if that is as nearly as you remember the letter which you sent out to the members of the Sanitary Enameled Ware Association? A. Yes.

Q. Had that letter anything to do with the licenses which you granted the manufacturers of sanitary enameled iron ware under the Arrott and other patents? A. No, sir.

Q. Or with your efforts to bring about those licenses? A. No, sir.

3 Q. I observe that this letter contains various quoted paragraphs commencing "We are no doubt passing through the dullest period of the year so far as enameled ware is concerned, but we believe we are going to have a good demand a little later." Then another paragraph beginning "We see no reason why any manufacturers should cut prices at this time, as the market will no doubt right itself in the near future, when everybody will have all the trade they can handle in this line." And another paragraph beginning "Our order sheets for the present year and for the last few weeks of the last year, especially on small ware, have been very unsatisfactory, particularly so during January. The

4 year, however, is young and we are not at all uneasy * * *." Then another paragraph, "Business is very dull. We have had a most remarkable falling off in business within the last thirty days." Then another paragraph saying, "We are not hearing of any cutting of prices only as reflected by the prices that some of the jobbers are making." Then another paragraph, "Your letter of January 18th regarding the state of the market and advising that several of the manu-

facturers report business unusually dull, received." What are those various quoted paragraphs? 1

A. Those are extracts from letters that I received in reply to my circular letter of January 18, asking with reference to the market conditions.

Q. And you sent those out to advise the various members of the Associations what you heard from the other members?

A. Yes, sir.

Q. To keep them advised of market conditions?

A. Yes, sir.

Q. Did that have anything to do with the efforts you were making with respect to licenses under the Arrott and other patents? 2

A. No, sir; it was simply in the natural order of business.

Q. Now, I call your attention to Petitioner's Exhibit No. 292, it being a letter dated April 27, 1910, and addressed to Mr. J. A. Kelly, and signed by E. L. Wayman, and upon the letterhead of E. L. Wayman. In this letter you were talking about the Niagara Falls meeting of jobbers and in the last sentence you say: "I was made to feel that the manufacturers are pursuing the only and proper course" Had you told the jobbers at that Niagara Falls meeting what plan you had proposed to the manufacturers? 3

A. Yes, I went into the matter fully with them. I told them that the manufacturers were going to enter into these license agreements with me and I explained the details of the jobber's license agreement, also explained that seconds were going to be eliminated from the market and went into the matter in general.

Q. And told them that the manufacturers were going to take licenses from you? A. Yes, sir.

Q. What did you mean by these words: "I was made to feel that the manufacturers are pursuing the only and proper course?"

A. Simply that that was the only and proper course to take. 4

Q. That the jobbers felt that was the only wise thing for them to do, is that what you mean? A. Yes, sir.

Q. Now, I call your attention to Petitioner's Exhibit No. 293, it being a letter dated February 2, 1910, addressed to Mr. J. W. Conchar, 41 Park Row, New York City, and I ask you to read it.

The witness then did as requested.

1 Q. As I understand, this letter was written in reply to a letter from him which you testified to in response to Mr. Grosvenor's questions, is that correct? A. Yes, sir.

Q. I call your attention to these words: "The manufacturers wish to advise you that they are now trying to work out the scheme of resale prices, and at the meeting yesterday, considerable progress was made in this direction." Will you please tell me what your purpose was in writing that?

A. I was anxious to give the jobbers the impression that the plans I presented at the meeting, after the regular meeting of the Association on February 1, was meeting with some
2 encouragement. The letter was addressed to me, I believe, as Commissioner of the Sanitary Enameled Ware Association, and during the meeting of the Association I simply read the letter and said that it referred to a subject in general which I wished to talk to them about after the regular meeting, and Mr. Kohler was in the chair and said, "Well, I don't know what we can tell them," so I said that I would write to them.

Q. Well, did you mean by this that the manufacturers were working out the scheme, or that you were working out a scheme to present to the manufacturers?

3 A. Yes, that is what I meant exactly.

Q. What did you mean?

A. That the scheme that I had presented at the meeting which was held after the regular meeting of the Association, was meeting with some encouragement.

Q. You mean that the manufacturers wished to advise you for your own purposes? A. Yes, sir.

Q. Is that what you meant to say?

A. Yes, sir; absolutely.

Q. Then you say again in the next sentence, "The manufacturers believe that the plans they have in view, while they
4 may not embrace all of the requests that have been made by your Association, will be of such scope, that they will be able to provide for reasonable profits to the jobber, thereby making enameled ware more desirable to handle than in the past." What plans does that refer to?

A. To the plans which I presented after the regular meeting.

Q. And which you later embodied in the license agreement? A. Yes, sir.

Q. They were your plans and not the manufacturers' plans? A. They were my plans altogether. 1

Q. And you were merely using the name of the manufacturers in your reply, is that the idea? A. Yes, sir.

Q. You say "the manufacturers will be pleased to meet your Committee just as soon as their own plans are in a more concrete form, and believe this will be the case in the near future." The plans you there referred to were what?

A. The same plans, which I presented to them after the regular meeting.

Q. And those were the plans which you had been presenting to them from time to time in going around to their various places of business? A. Yes, sir. 2

Q. Did the manufacturers ask you to write this letter in its present form?

A. No, sir; they had nothing to do with it.

Q. Did the manufacturers have any plans? A. No, sir.

Q. Now, Mr. Wayman, I call your attention to Petitioner's Exhibit No. 294 and ask you what that resolution which says, "No seconds in small ware to be sold in the United States" means?

A. That was a resolution passed in October, 1909, I think it was.

3

Q. That was a stock resolution, was it?

A. Yes, sir; it had nothing to do with the license arrangement whatever.

Q. Did that resolution go into effect actually among the manufacturers? A. Not entirely so, no.

Q. Did it have anything at all to do with your efforts to bring about the acceptance of licenses from you under the Arrott and the other patents?

A. No, it simply was a reinstatement of a resolution which had existed in the former organization.

Q. In your license agreement which you later presented you did have a provision with reference to seconds? 4

A. Yes, sir.

Q. What was that?

A. The license agreement between the manufacturers and myself provided that no seconds should be sold, and it also provided that the goods should be boxed and crated—

Q. And your purpose for putting that provision as to seconds in the license agreement was what?

A. To prevent their sale.

1 Q. There is also this statement in the bulletin: "Lavatories, roll rim sinks and other small ware will be crated and boxed. No orders accepted for goods nested except flat rim sinks. No claims whatever will be allowed for damages to enameled kitchen sinks when same are shipped nested." What was that?

A. That was the resolution adopted by the Association and had nothing to do with the license agreements whatever.

Q. Was this rule, here adopted, that lavatories, roll rim sinks and other small ware should be crated and boxed carried into effect? A. No.

2 Q. When you gave these licenses to the various manufacturers, you had a provision providing for this crating and boxing, did you not? A. Yes, sir.

Q. What was the purpose of that?

A. To insure the safe delivery of the enameled ware.

Q. Mr. Grosvenor asked you whether, upon December 28, when you got the option from Mr. Dawes upon the Arrott patent, the exact price which you were to pay was fixed; now I ask you was a method agreed upon for determining the price?

A. Yes, if I took an exclusive license with the right to

3 fix the terms and conditions, it was agreed that the royalty should be low enough so that I could make a fair profit above cost of administration. In case I purchased the patent, we agreed to pay the cost they had paid Arrott for the patent together with the cost of litigation as a basis for figuring out the cost per year, allowing them, of course, a reasonable profit above what it cost them, but the definite price was not agreed on at the time.

Q. You mean the exact dollars and cents? A. Yes, sir.

Q. But the method was arranged? A Yes, sir.

Q. When did you begin your exploitation of and your

4 efforts to secure licenses, with regard to this Arrott patent?

A. After I got the option on the Arrott patent, the 30th and 31st of December, 1909.

Q. Mr. Wayman, I now call your attention to a letter dated May 31, 1910, on the letterhead of E. L. Wayman, and signed by you as Licensor and addressed to Mr. F. J. Torrance, and I ask you what that letter is?

A. That is a notice to Mr. Torrance asking him to make arrangement to keep a record of his furnaces in operation, beginning June 1.

Q. Was that letter sent to other persons other than Mr. Torrance? A. Yes, it was sent to all the licensees. 1

Q. The letter to which I refer reads: "Dear Sir:—Beginning tomorrow, will you kindly keep a record of your furnaces in operation? The latter part of the week I will send you printed forms to keep these records on, which are to be forwarded to me monthly. Yours very truly, E. L. Wayman, Licensor." Now, was that letter sent to each of the companies to which you granted a license? A. Yes, sir.

Q. I observe that on the specific copy which I have before me there is a notation "Copy sent to Mr. Ahrens, Louisville, and Mr. Dawes, Pittsburgh." In whose handwriting is that? 2
A. That is mine.

Q. So, in notifying the Standard Sanitary Manufacturing Company, you notified Mr. Ahrens, Mr. Torrance, and Mr. Dawes; is that correct? A. Yes, sir.

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 28.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 28."

Q. Does Mr. Dawes have charge of the manufacturing business of the Standard Sanitary Manufacturing Company around Pittsburgh? A. Yes, sir. 3

Q. Of what plant?

A. The Allegheny and New Brighton plants, as well as the Louisville plant; he is the general manager of plants.

Q. And Mr. Ahrens is the President of the Company, making his headquarters at Louisville? A. Yes, sir.

Q. I now show you a letter upon the letterhead of Edwin L. Wayman, with a blank space for the signature and the word "Licensor" under it, dated June 13, 1910, and I ask you what that is?

A. That is a circular letter which I sent to the licensees. 4

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 29.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 29."

Q. Will you read it aloud?

A. (Reading): "June 13, 1910. To the Licensees: In order that there may be no misunderstanding, I wish to advise you that it is not the intention to confine the execution

of the jobber's license agreements to the list of names in the Blue List. All firms, that do a jobbing business, are entitled to buy goods provided the individual manufacturers desire to sell them, if they will execute this contract. Yours very truly ————————, Licensor."

Q. This was official notice by you to the manufacturers that anybody who did a jobbing business, whether his name appeared in what is called the "Blue Book," or no, was, so far as you were concerned, free to make contracts with you or your licensees relative to the ware manufactured under your patents? Is that correct?

A. Yes, sir; and in addition to that it is a reiteration of the statement made to the licensees in New York on May 6th.

Q. That was the date on which a large number of them accepted licenses from you, is that correct? A. Yes, sir.

Q. I believe it is a fact that there are a great many jobbers who did accept contracts whose names do not appear in the Blue Book. Is that correct?

A. Yes, sir; that is correct.

Mr. NOBLE: That is all.

Mr. GROSVENOR: I have no questions; that is all for us.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: Counsel for the Defendants desires to renew the notice which he has heretofore given as to the motion to enlarge the time for the Defendants to take their testimony, which he will make before the Court at Richmond on final hearing, on June 15 and 16, 1911. Counsel for Defendants has not closed his case, and under the circumstances heretofore stated in the Record is unable at this time to close his case. Counsel waives no right to take further testimony upon the issues here involved.

Adjourned.

DEFENDANTS' EXHIBIT No. 1. 1

Consisting of Pencil Notes on this Sheet.

Filed Nov. 4, 1910.

1. Patents to be assigned to Licensor.
2. Schedules of Ware under License. [*Entire line.]
3. Amount of Royalty. [Proportioned as at present.]
4. Amount of Forfeit. [Proportioned to size.]
5. Prices to be established by? [Executive Com.]
6. Resale Price List—Discount to Jobbers. [15% over cost.]
7. Rebates to Jobbers for maintaining Resale Prices. 2 [10%.]
8. Length of Rebate Periods. [Not less than 3 mo.] [Price on which Rebate applies.]
9. Agreements to become effective and no Future Delivery Orders [Quarterly.] to be recognized beyond that date.
10. Contract Forms between Licensor and Manufacturers.
11. Differentials between Manufacturers. [Not more than 2½%.]
12. Contract Forms between Manufacturers and Jobbers. [Can penalties be enforced.] 3
[Central Selling Co.]
[Policing.]
[Direct shipments % extra.]
[Territories divided.]

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* Printed matter in brackets Defendants' Exhibit.

4

1 **DEFENDANTS' EXHIBIT No. 2.**

Filed Nov. 4, 1910.

J. M. KOHLER SONS CO.

June 20th, '10.

Mr. Edwin L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:—

2 We have yours of June 17th requiring return of correspondence between your office and ours, which you had forwarded to us, and regret to have to advise that this correspondence was promptly destroyed upon its receipt.

We trust you have not been inconvenienced thereby, and remain,

Very truly yours,
J. M. KOHLER SONS CO.,
per WALTER J. KOHLER,
Pres.

WJK-W

3 **DEFENDANTS' EXHIBIT No. 3.**

Filed Nov. 4, 1910.

(Consisting of long-hand notes here on Petitioner's Exhibit No. 143.)

Preliminary proposed plans—has no date or our receiving stamp mark. Evidently the first proposed—Not used—Referred to in our letter to U. S. Attorney General dated 6/28/10.

4

CHARTS

TOO

LARGE

FOR

FILMING

DEFENDANTS' EXHIBIT No. 10.

Certified copy of U. S. Letters Patent No. 633,941, issued to James W. Arrott, Jr., for dredger for pulverulent material. (Not printed.)

DEFENDANTS' EXHIBIT No. 11.

Filed April 19, 1911.

UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF NEW JERSEY.

STANDARD SANITARY MANUFACTURING COMPANY,

v.

J. L. MOTT IRON WORKS,

In Equity.

George R. Beach, and
Christy and Christy, solicitors and
Marshall A. Christy, and
George H. Christy, of Counsel for Complainant, and

W. P. Preble, Jr., Solicitor and of Counsel for Defendant.

OPINION.

CROSS, District Judge. The bill of complaint charges the defendant with infringing a patent issued to one James W. Arrott, Jr., dated September 26, 1899, known as No. 633,941, and which by assignment subsequently became, and is now, the property of the complainant. The device covered by the patent is a "Dredger for Pulverulent Material," and the patentee in describing it says, "this invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bath-tubs and other vessels commonly known to the trade as 'dredgers.'" The answer sets up the invalidity of the patent for want of novelty and invention, and also denies infringement. There are three claims in the patent, all of which it is contended have been infringed; they are as follows:

1 1. "A dredger or sifter consisting of a screen or sieve and a supporting-handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve substantially as described."

2. "A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described."

2 3. "A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto with means for controlling the operation of said agitator, substantially as described."

This patent was before the Circuit Court for the Western District of Pennsylvania, in cross suits between the patentee and the present complainant, and was therein adjudged to be good and valid in law. It appears from the opinion of Judge Acheson, that an alleged prior use of the patented article was considered by him, and disallowed; however, he
3 states that the patentability of the improvement was not denied (131 Fed. 457). The decrees entered in those suits were subsequently affirmed by the Circuit Court of Appeals for the Third Circuit (35 Fed. 750). As already indicated, the dredger is used for distributing powdered enamel over cast-iron sanitary ware, while the ware is heated to a red heat. The process may be briefly described as follows:—After the casting has been prepared for the enameling, a first coat commonly called "slush or base" is applied to the article in liquid form; after this coating has dried, the article is placed in the enameling furnace until the same is burned or
4 fused into the iron, and the casting itself has been raised to a bright red heat; when thus heated, the article, generally a bath-tub, is withdrawn from the furnace and placed in a holder or cradle resting upon a table, and the powdered enamel dusted by a dredger over the hot surface of the tub as evenly as possible, until the tub has cooled to such a degree that it will not readily hold the enamel, whereupon it is reheated, whereby the enamel deposited thereon is fused into a uniform homogeneous layer; the reheated tub is then withdrawn from the furnace and given a second coat of the

powdered enamel, and this operation is repeated as often as 1
is necessary to obtain a smooth and even coating of the enamel. While the casting is resting upon the holder or cradle, it is turned from time to time in different directions and at different angles in order that the powdered enamel may fall as nearly as may be at right angles to that portion of the surface upon which it is then being distributed. The enamel as used is an extremely fine powder, like ordinary flour in that respect, although considerably heavier. In order that the enameling operation should be completely successful, the powder must be distributed evenly and uniformly over the surface of the tub, and it must be applied as speedily 2
as possible, since the powder will not adhere to the casting when its temperature is lowered beyond a certain degree. Unless the enamel has been evenly distributed over the article, its surface when finished will have a lumpy or wavy appearance, which, if glaring, renders the article worthless, and if barely apparent, makes it what is called a "second", and an article of that grade is of considerably diminished value. In order to produce an even coating of the enamel, there must be uniformity and continuity in the flow of the powdered enamel, and under these conditions all that the operator has to do to insure success, is to move the dredger 3
over the surface to be covered at a uniform rate of movement. On the contrary, when the flow of the enamel from the dredger is not uniform or continuous, an even distribution of the enamel is rendered much more difficult, if not impossible. The condition of the prior art and the object which the inventor by his patent sought to attain, will be stated in his own language.

> "The ordinary dredger consists simply of a sieve or other screen of proper mesh having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not freely pass 4
> through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredger with the hand or with some instrument held in the hand by tapping or striking the dredger or by striking the dredger against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow and requires considerable skill in manipulating the dredger

so as to insure an even delivery of the enameling material."

"The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate within the latter and strike the end or side of the dredger with every forward stroke."

The hand-dredger of the prior art, consisted of an ordinary tin cup or measure, holding ten or twelve pounds of the powdered enamel, and having a fine meshed sieve-bottom, a wooden handle four or five feet long attached to the cup or measure, and a detached beater. The handle of the dredge was ordinarily grasped by the workman with his left hand, the end of the handle projecting back under his elbow for support, and while the dredge was thus supported, it was moved around over the surface of the article to be enameled and its handle constantly beaten above and below by a beater held and operated by the right hand of the workman. This was obviously a somewhat crude and certainly a laborious operation, and it was necessarily performed in immediate proximity to a red hot tub. Speaking of the labor involved in the use of a hand tapped dredger, complainant's manager says:

"The operation of handling a hand-tapping dredge is not only difficult but laborious, and before a man could become expert in his work, he was compelled to master the knack of depositing the enamel evenly upon the surface of the casting. It was always necessary to not only have a man of good judgment, but a man of physical strength. The constant tapping, and standing in front of a hot casting at the same time, was very exhausting. During the summer months it was almost an impossibility to keep the furnaces fully manned, by reason of the men becoming exhausted at

their work, largely on account of the labor connected with the applying of the enamel to the casting." 1

Another witness, a practical enameler says:

"This operation of holding the dredge with one hand and rapping with the other was very hard labor. Continuous rapping with one hand for a certain length of time cramped your arm so that you could not rap any further or proceed with enameling."

The disadvantages and labor of this method were so apparent that the complainant's witnesses testify that considerable effort had been made to overcome them. By the pneumatic method of the patent in suit, what was before laborious, slow and uncertain, has been rendered comparatively easy, rapid and successful; the testimony shows that the operation of enameling bath-tubs under this patent, has been so accelerated that whereas by the hand-beater a workman could enamel but a single tub an hour, he can now enamel from two and a half to four tubs an hour. The pneumatic hammer strikes several thousand graded and uniform taps a minute, and the blows are communicated by a rod from the hammer through the hollow handle of the dredger to the sieve-bottom of the vessel holding the enamel, without agitating to any appreciable extent the handle itself, thus maintaining an even and constant flow of the powder. In its use the workman has both hands free to support the dredger and can move it quietly and quickly over the article being enameled, without any disturbing jar, from the motion of his arm in striking or from the blows struck by him, which was unavoidable under the old method. The testimony clearly shows that by the pneumatic method the powdered enamel flows evenly and continuously from its receptacle, while by the hand-method it is discharged in varying volume by intermittent puffs. 2 3 4

It seems to me that the prior art requires very little attention. It is true that pneumatic hammers were used for certain purposes prior to the complainant's patent, but they were not used in the art under consideration, or indeed, in any analogous art. The Boyer Patent No. 575,589, is one of this class, but is so far removed from the patent under discussion, as not to require serious consideration. Hammers of that character were used for heading rivets, cutting

1 stone and work of like character. The Hyde Patent No. 91,849 is for a Pneumatic Dental Plugger, and of this nothing more need be said. The Babbitt Patent No. 454,149 is used for embossing work in sheet metal. Many other patents are cited, but the idea of the patent in suit is entirely foreign to each of them; they were mostly designed for screening sand, coal, ashes, grain, bran and other like materials. Their purpose was to separate larger particles from smaller, and in their operation the screen moves speedily back and forth or peripherally, and the substance screened is by its own weight caused to slide back and forth over the surface of the screen
2 whereby the finer particles are dropped through, and the coarser are retained or distributed apart from the finer. There is nothing in any of them which would be at all likely to suggest what Arrott accomplished; they are in a different art, of different construction and used for entirely different purposes. His idea was the use of a pneumatic or automatic agitator attached to the dredger and adapted to vibrate the sieve through a hollow handle. As already stated, all of the appliances known to the art prior to his patent, were hand-vibrators of some sort. None of them approximated or claimed to approximate what Arrott did, and their considera-
3 tion would be unprofitable. It is true all of the elements in his patent are old, but they are combined in a new way to produce a new and useful result. By it the hand-beater has been eliminated, and with it, to a great extent, the personal equation. His invention is useful, successful and economical, and in my judgment discloses novelty and invention; although simple it was not obvious.

The defendant, however, alleges that the patent is invalid because of the prior use of an unpatented pneumatic device of a like character to accomplish the same purpose. In support of this contention, considerable evidence has been pro-
4 duced from which it appears that a few bath-tubs were enameled with some degree of success, by the defendant in the fall of 1896, by a device in some respects similar to that defined in the complainant's patent; but I think that the evidence considered as a whole, discloses nothing more than an abandoned experiment. The device, there was but one, was in operation, so the workmen who used it say, off and on for about a week or ten days, although one or two other witnesses intimate that it was used for a somewhat longer period. It was then unquestionably dismantled and was not

again used, nor was anything like it used for several years afterwards, and not until after the defendant had removed its works from Mott Haven, N. Y., to Trenton, N. J. In attempting to describe the apparatus, two of the witnesses say that the pneumatic hammer was placed *under* the outer end of the handle; one that it was at the *sieve end*, right up against the sieve, and still another that it was at about the *middle* of the length of the handle and on *top* thereof. The uncertainties and discrepancies of their testimony, is apparent, and it can only be reconciled upon the theory that the hammer was being changed hourly or daily from one position to another, which tends strongly to show that the device was purely experimental. Furthermore, it probably was a failure. It certainly was used but a very short time, and was then abandoned. The superintendent of the defendant gives as a reason for such abandonment, insufficiency of the boiler capacity of the plant to furnish the requisite power over and above what was required for other purposes, and being asked what the boiler capacity of the plant was, said that it was sixty horse power; the engineer of the defendant, however, being asked the same question, said that it was one hundred and twenty horse power; this would seem to dispose of the reason for abandonment alleged by the superintendent. The only other reason for its abandonment, and this by a different witness, was that the alleged inventor left the defendant's factory and employment; this reason, is as improbable as the other, since the testimony shows that the device, whatever it was, was used in November 1896, whereas its inventor did not leave the factory until May 11, 1897. Furthermore, workmen who used the device say that they made more money by the old way of enameling; that the new method was not fast enough; that they used it because they were ordered to; that it did not distribute the enamel any better or any faster, nor was it any easier to move around over the tub, and that the old hand method of Leffert's patent dredger did just as good work and was just as easy to handle. The alleged device was not produced, nor was any part of it, unless it be the pneumatic hammer. While the testimony was being taken, the workmen who mainly used the device, were shown a pneumatic hammer which they said they recognized as the one used in November 1896; one of them when asked how he identified it, answered, "by its make up, and where the rod enters, and size of valve used for the air to let the air into

the tool," and the other unhesitatingly recognized it by its number which was "3817 C.C." The first witness does not pretend that the characteristics which he describes, and by which he claimed to identify the hammer, were in any wise peculiar to that particular hammer; while the second, who admitted that he made no memorandum of the number, nevertheless claimed to remember it by its number after the lapse of ten years. The prodigious feat of memory involved in this identification is apparent and requires no comment. To my mind, however, it trenches so far on the improbable as to greatly effect the credibility of the testimony. There is one other matter in this connection which requires mention. The man who is alleged to have invented the pneumatic dredger used by the defendant in 1896, was one Harry Lefferts; his father Leffert Lefferts, was a witness in the case; he was formerly, and for about twenty-five years, a superintendent of the defendant's plant, but left the company's employment in May 1896. His testimony in this case was given last October, and upon being asked the present address of his son, replied, "I have received no communication from him for the last seven or eight months. Do not know where he is at present, but suppose that he is at his old address at No. 8 Gould Street, San Francisco." And upon cross-examination added that when he last heard from him he was in the employment of the Southern Pacific Construction Company. He of all others was apparently the one who could have told the most about the construction and operation of the device alleged to have been in use in 1896; he was the superintendent of the defendant's enameling department at the time, and the alleged inventor of the device. He is not produced, however, nor is any evidence offered to show that he could not have been. His absence is entirely unaccounted for, although his address was presumably known. I think this circumstance very strongly militates against the defence of prior use. In the case of Simmons, et al. v. Standard Oil Co., et al. 62 Fed. 928, Judge Coxe, at page 930, commenting upon the absence of a witness under somewhat similar circumstances, said, "The complainants have introduced a mass of testimony to show that Glankler conceived the invention in the autumn of 1888, months prior to the alleged use at Cincinnati and Chicago. This testimony, notwithstanding numerous contradictions and discrepancies, is upon the whole, so full and circumstantial, that it would be accepted as conclusive, were

it not for the fact that Glankler himself failed to appear as a witness. No sufficient reason is given for his nonappearance. It was apparently without excuse and leaves room to doubt the accuracy of the complainants' dates and the correctness of their conclusions. No matter from what point of view the question is approached, there is always the suspicion that if Glankler could have corroborated this testimony, he would have done so." In the present case Leffert's testimony was so important, and its unexplained absence so suspicious, that I think Judge Coxe's remarks are eminently pertinent and applicable. If the witness could not have been found, that fact could have been easily shown, but if found, his testimony would in all probability have been more illuminative of the point under consideration, than the combined testimony of all the other witnesses. His absence unaccounted for, is suspicious, and opens the entire defence of prior use to suspicion. The rule of law applicable to the defence of prior use, is well settled and renders any extensive citation of authorities unnecessary. It may be found laid down in Coffin v. Ogden, 18 Wall. 120, 124, and The Barbed Wire Patent Case, 143 U. S. 275, 285. In the case at bar, the testimony is unsupported by any patents, drawings or exhibits, and a case thus made is always open to grave suspicion. In Deering v. Winona Harvester Works, 155 U. S., 286, 300, Mr. Justice Brown, says "Oral testimony unsupported by patents or exhibits, tending to show prior use of a device, regularly patented, is in the nature of the case open to grave suspicion." He then cites The Barbed Wire Patent Case, and adds considerable matter pertinent to the case at bar, but which it is unnecessary to quote. I think the prior use which has been set up as a defence, was experimental, as indeed, some of the defendant's witnesses called it, and the general superintendent of the defendant's plant, near the close of his testimony plainly admits that after the workmen who used the machine, had abandoned its use, Leffert's, its inventor, was still working at it. There is one other circumstance in this connection which should be alluded to. After the abandonment by the defendant, of the single article used in the fall of 1896, it does not pretend that it again used a pneumatic dredger until about December 1, 1905. Shortly prior to this latter date, it had bought several thousand of enameled bath-tubs of the complainant, and in the course of these transactions its superintendent frequently visited the

1 complainant's works and had ample opportunity to, and did in fact, as he admits observe the operations of their plant, and became "very familiar" with the operation of their pneumatic dredger, although this, as he says, was not the object of his visits. Not long thereafter, however, the defendant adopted and put into general use in its factory, the alleged infringing devices.

Upon the question of infringement, there is little to be said. The defendant has adopted the complainant's device and used it. In its use, however, it partially supports the weight of the pneumatic dredger by a chain attached to and
2 suspended from the ceiling of the factory. This perhaps makes it easier for the operator, but does not in any way alter the character of the device or its method of operation. The defendant claims, however, that this support by a chain affixed to the ceiling, makes the device stationary, and that since Arrott, the patentee of complainant's device disclaimed its application to stationary apparatus, the defendant does not infringe. What the patentee said, and all that he said, in this connection was, "I am aware that jarring or vibrating devices have been used in stationary apparatus used for sifting material"; it is quite evident to what he there refers;
3 that the defendant's infringing device was not a stationary apparatus within the terms of this disclaimer, is apparent. The dredger was merely supported or partially supported by a cord or rope to take some of its weight from the workman; it was not however, stationary in any proper sense of the word; it was moveable and had, while in use, to be moved constantly back and forth over the ware which was being enameled, exactly as it would have been if unsupported. This support was of the same character as that afforded by a strap over the neck or shoulder of the operator as disclosed in the hand-beater dredger, in the prior art.

4 The complainant is entitled to a decree of the usual form in like case, with costs.

JOSEPH CROSS,
Judge.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss.*

I, Henry D. Oliphant, Clerk of the Circuit Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a

true copy of the original Opinion, on file, and now remaining among the records of the said Court, in my office. 1

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of the said Court, [SEAL.] at Trenton, in said District, this Fifteenth day of February, nineteen hundred and eleven.

H. D. OLIPHANT,
Clerk Circuit Court, U. S.

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DEFENDANTS' EXHIBIT No. 12.

Filed April 19, 1911.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF NEW JERSEY.

STANDARD SANITARY MANUFACTURING COMPANY vs. J. L. MOTT IRON WORKS.	In Equity. No. 40, March Term, 1906.

2

Decree.

And now, to wit, May 13, 1907, this cause having come on for final hearing upon the bill of complaint, answer, replications, and proofs taken on behalf of both parties, and the Court having heard arguments of counsel for both parties, and having considered the same, it is ORDERED, ADJUDGED and DECREED as follows:

First: That the Letters Patent of the United States here in suit, No. 633,941, for Dredger for Pulverulent Material, granted on September 26th, 1899, to James W. Arrott, Junior, are in all respects good and valid in law; that the complainant herein, Standard Sanitary Manufacturing Company, is the true and lawful owner of the said Letters Patent; and that the defendant, J. L. Mott Iron Works, has infringed upon the said Letters Patent in respect of each and all of the claims thereof, and upon the exclusive rights of the said complainant thereunder;

3

Second: That an injunction be issued out of and under the seal of this Court against the said defendant, J. L. Mott Iron Works, perpetually enjoining and restraining the said defendant, its successors and assigns, and each and all of its officers, servants, agents, attorneys, employees, and workmen, and every person acting for or on behalf of the said defendant, its successors and assigns, from any construction, sale or use, in any manner, of any dredger or dredgers containing or embodying the invention covered by the said Letters Patent, in violation of the rights of the said complainant, as prayed for in the bill of complaint herein;

4

Third: That the said complainant do recover from the said defendant the profits which the said defendant has re-

ceived or made, or which have accrued to it, from its in- 1
fringement of the said Letters patent, and that the said complainant do also recover from the said defendant the damages which it, the said complainant, has sustained by reason of said infringement;

Fourth: That it be referred to Henry D. Oliphant, Esquire, of Trenton, N. J., as Master, to ascertain, take and state an account of the profits which the said defendant has received or made, or which have accrued to it, from its said infringement, and to assess the damages sustained by the said complainant by reason of said infringement, and to report the same to this Court with all convenient speed; 2

Fifth: That the said complainant on said accounting shall have the right to cause an examination of the officers, directors and employees of the said defendant *ore tenus* or otherwise, and the production of the books, vouchers, exhibits, statements and documents of the said defendant, as the said Master may direct, and that the said defendant, its officers, directors and employees shall attend for such purposes before the said Master from time to time as he shall direct;

Sixth: That the said complainant do recover from the 3
said defendant the costs of this suit to be taxed.

JOSEPH CROSS,
Judge.

Approved as to form.
W. P. PREBLE, JR.
Counsel for Defendant.

UNITED STATES OF AMERICA, }
District of New Jersey, } *ss.:*

I, Henry D. Oliphant, Clerk of the Circuit Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be 4
a true copy of the original Decree on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the Seal of the
[SEAL.] said Court, at Trenton, in said District, this Twenty-fourth day of February, nineteen hundred and eleven.

H. D. OLIPHANT,
Clerk Circuit Court, U. S.

1 **DEFENDANTS' EXHIBIT No. 13.**

Filed April 19, 1911.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. October Term, 1907.

J. L. MOTT IRON WORKS,

Appellant,

VS.

2 STANDARD SANITARY MANUFACTURING COMPANY,

Appellee.

Before DALLAS, GRAY and BUFFINGTON, Circuit Judges.

BUFFINGTON, J.

In the court below the Standard Sanitary Manufacturing Company, owner of patent No. 633,941, granted September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, brought suit for the infringement
3 thereof against the J. L. Mott Iron Works. That court adjudged the patent valid and the three claims thereof infringed. From such decree the latter company appealed.

The patent concerns the process of enameling bath tubs and like wares, and that process consists in evenly distributing through a sieve powdered glass on the surface of such cast iron tubs raised to a high heat. This sprinkling process is repeated several times and after each the tub is reheated. This in time produces the thick glassy coating seen in the modern enamelled tub. To properly enamel a tub required that just the right amount of powdered glass should pass
4 through the sieve and be distributed; that it should be distributed uniformly over the tub, and that it should fall at right angles to the tub surface on which it was sprinkled. Failure to fulfill these requirements made a lumpy or wavy surface and an imperfect tub. In the practice both prior and subsequent to the patent, a heated tub was placed in a cradle and its position so shifted that an enameler could let the glass fall at right angles to its surface. In the old system he held the sieve with one hand and with the other struck its handle with a pronged tool and thus dropped the

powder through the sieve. It will be noted this work was done under great strain. The tubs were heated to some ten or eleven hundred degrees Fahrenheit and the sieve handle was short to enable the workmen with one hand to counterbalance the glass in the sieve. With the hand thus strained to support, he must at the same time horizontally move the sieve to secure uniform lateral distribution and meanwhile the force and frequency of the blows given by the other hand must be such as to discharge the precise amount of glass. Moreover, as the powder came through in distinct puffs or waves after each blow, the sieve must, to avoid the injurious wave effect, be moving when the blow was struck. The heat was such as to compel the use of asbestos clothes, apron, gloves and face screens. These difficulties are stated by different witnesses: "With the hand dredge it was very difficult to distribute the enamel evenly on the surface of the work on account of irregular rapping. When a man started in on a tub he could rap pretty fast, but toward the end of the operation he would get tired and rap more slowly. This made it enamel uneven. Sometimes on very large tubs, during the process of enameling my arm would give out and I would have to rest for a second or so on account of my arm being seized with cramps, which most of the enamelers experienced the same. Some enamelers that I worked with wore out their arms and had to stop work"; * * * "it was very hard to operate the hand dredge * * * on account of the difficulty to learn the right rap. That is the most difficult proposition in the hand dredge, is the rap"; * * * . "The operation of handling a hand-tapping dredge was not only difficult but laborious, and before a man could become expert in his work he was compelled to master the knack of depositing the enamel evenly upon the surface of the casting. It was always necessary to not only have a man of good judgment, but a man of physical strength. The constant tapping, and standing in front of a hot casting at the same time, was very exhausting. During the summer months, it was almost an impossibility to keep the furnaces fully manned, by reason of the men becoming exhausted at their work, largely on account of the labor connected with the applying of the enamel to the casting." By this method a skilled workman could enamel one tub an hour. Now the improvement made by Arrott was simple but effective. It converted an ordinary

1 sieve, by using a pneumatic hammer in connection therewith, into an automatic sprinkling machine. What the patentee did is thus described in the specification: "The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger so as to recip-
2 rocate within the latter and strike the end or side of the dredger with every forward stroke." The proofs show that with Arrott's dredge a man can by touching a valve button secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a uniform lateral powder distribution. The blows are so rapid and regular that the powder instead of jetting through the sieve in a puff or distinct wave with each hand-struck blow, flows in a practically continuous, regular sheet. This device subjects an enameler to a much less strain in the face of ter-
3 rific heat, while it enables him to enamel three tubs an hour and such work can be done by less skilled and easier-taught men. While there were other improvements which enabled a factory to handle more tubs and to that extent may be said to have helped produce this substantial increase of output, yet it is manifest that save for Arrott's device, these other mechanical improvements would be of no avail owing to the limitations of human strength and endurance, which confined the old enameling process to impassable product bounds.

The prior art disclosed no such device as Arrott's, and
4 we are of opinion it was his individual work and involved patentability. It is easy now to minimize its importance and say it consisted simply in applying a pneumatic hammer to a sieve, but the fact remains that with the difficulty of enameling keenly recognized in the art, no one made such combination. Indeed, its inventive character is evidenced by the alleged anticipatory uses in the respondent's works. The combined use of a pneumatic hammer with a sieve was some years before there tried and abandoned. The evidence of exact practice is not such as to establish an

anticipatory use, for it is contradictory as to how the hammer was applied, but the highly significant fact is that even with the thought of a possible combination of pneumatic hammer and sieve suggested to men skilled in that art, they were not able to mechanically place the two in successful operative relation. But Arrott did just what they failed to do. He contributed to an important industry a device, labor-saving, effective, and which, in relieving to a degree labor under fierce heat conditions, rose to the plane of the humane. It was these results which the respondent failed to secure that make Arrott's work invention, and theirs a fruitless and abandoned experiment. Their work began and ended in groping trial. The varying positions, at different times, of the pneumatic hammer with relation to both handle and sieve evidence those tentative, uncertain steps of experiment, which neither forestall the work of, or withhold the reward from the real inventor. So holding, we are of opinion the court below committed no error in adjudging the patent valid and respondent's dredge, which is a mere duplication of complainant's device, an infringement. The appeal is therefore dismissed.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. 53. October Term, 1907.

J. L. MOTT IRON WORKS,

Appellant,

vs.

STANDARD SANITARY MANUFACTURING COMPANY,

Appellee.

Appeal from the Circuit Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged

and decreed by this Court that the appeal in this cause be, and the same is hereby dismissed with costs.

GEO. M. DALLAS,
Circuit Judge.

Philadelphia. February 7, 1908.

(Endorsed: No. 53. October Term 1907. U. S. Circuit Court of Appeals Third Circuit. J. L. Mott Iron Works, Appellant, vs. Standard Sanitary Manufacturing Company, Appellee. Order dismissing appeal. Entered and filed, February 7, 1908, Wm. H. Merrick, Clerk.)

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *set.*
Third Judicial Circuit,

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original opinion and decree of this Court in the case of J. L. Mott Iron Works, Appellant, vs. Standard Sanitary Manufacturing Company, Appellee, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 20th day of February in the year of our Lord one thousand nine hundred and eleven and of the Independence of the United States the one hundred and thirty-fifth.

[SEAL.]

SAUNDERS LEWIS, Jr.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

DEFENDANTS' EXHIBIT No. 14.

Filed April 20, 1911.

THE DAY-WARD CO.

March 2nd, 1908.

Mr. E. L. Wayman,
c/o Seamless Steel Bathtub Co.,
Detroit, Mich.

Dear sir;—

The writer has decided to leave tomorrow night for the East, as he has some matters to look after in New York for a day, and will meet yourself and Mr. Barnes in Trenton on Thursday morning at Mr. Mattlack's office about ten o'clock.

Yours respectfully,

D/F GEO. E. DAY

DEFENDANTS' EXHIBIT No. 15.

Filed April 20, 1911.

(Telegram)

Warren O Mar 3-08

E. L. Wayman,
Care Seamless Steel Bath Tub Co.,
Detroit, Mich.

Mattlack wires cannot meet us until Friday morning. Expecting letter will wire more definitely to-morrow.

GEORGE E. DAY

1 **DEFENDANTS' EXHIBIT No. 16.**

Filed April 20, 1911.

THE DAY-WARD CO.

March 4th, 1908.

Seamless Steel Bathtub Co.,
Detroit, Mich.

Gentlemen;—

We confirm our telegram to you of even date as follows;
2 "Advise Mr. Wayman to meet Mr. Day in Trenton Friday". Would say Mr. Wayman called us up by telephone from Pittsburg a short time ago and advised us that he would meet Mr. Day at Trenton on Friday.

Yours truly,
THE DAY-WARD CO.
W/F Per A. G. WARD

3

DEFENDANTS' EXHIBIT No. 17.

Filed April 20, 1911.

(Telegram)

Warren Ohio 4 Mar.

4 Seamless Steel Bath Tub Co
Detroit

Advise Mr. Wayman to meet Mr Day in Trenton friday
THE DAY WARD CO.

DEFENDANTS' EXHIBIT No. 18. 1

Filed April 20, 1911.

Mar. 11, 1908.

Mr. G. E. Day,
Warren, Ohio.

Dear Sir:—

I enclose you agency agreement which is the form of agreement used between the lamp manufacturer and the jobber who acts as agent for their particular brand of 2
lamps. There are some very good points in this which I have marked, and which could be used on a contract between the selling company and the jobber. You will note that it states very specifically that the jobber losses his rebate in case he does not live up to the contract. The Incandescent lamp manufacturers had in their agreement, the following:

"This Company is licensed to use the chemical exhaust process of obtaining a vacuum in lamps. This process is essential to the production of a lamp of the highest quality licensed in patent numbers." 3

The reproduction of the license label also appears on the letter-head. If this arrangement goes through, I think it would be well to have all of the manufacturers put on their letter-heads something to the following effect.

"This Company is licensed to use the automatic dredge process of applying porcelain to enamel ware. This process is essential to the production of enamel ware of the highest quality Licensed under patent ."

I am leaving this afternoon for New York and will be at the Manhattan Hotel until Saturday afternoon.

Trusting that this information will be of value to you 4
I am,

Yours very truly,

E. L. WAYMAN
Assistant Manager.

JW

1

DEFENDANTS' EXHIBIT No. 19.

Filed April 20, 1911.

SEAMLESS STEEL BATHTUB COMPANY
Union Trust Building
Detroit, Mich.

March 6, 1907.

Republic Mfg. Co.,
Chicago, Ill.

Gentlemen:—

2

CLAUSE (1). It is agreed that you will purchase from us 2000 assorted bath tubs; this entire quantity to be taken by you by March 31st, 1908.

CLAUSE (2). As this company is the owner of certain letters patent under which this product is manufactured, and is, therefore, interested in maintaining the value of these patents, it is agreed that you will maintain the selling prices issued by this company, as set forth in the sheet dated March 1st, copy of which is attached herewith, and is to be considered as part of this agreement, or such resale prices as may be established by the jobbers in the City of
3 Chicago.

It is understood that the prices mentioned in this agreement and in the price sheet attached, cover only the value of the product as furnished by us, and that no extra parts are to be furnished by you to your customers without making an extra charge for such additional equipment. In event of it being necessary to advance resale prices, you agree to adopt such advanced schedule of selling prices immediately upon notice from us that advanced resale prices become effective. Within five days of our request in writing, you agree to advise us definitely whether you have or
4 have not sold or offered to sell any product purchased in this agreement at lower prices or more favorable conditions of sale than those established in the city of Chicago.

CLAUSE (3). In consideration of this agreement being faithfully performed by you, we agree to invoice the product ordered in Clause one at a discount of 5%, to be deducted from the lowest quantity price as shown in net price list to Jobbers attached, or any Jobbers prices we may issue, except that when ordered in less than carload lots, the extra

charge for less than carload lots is to be paid by you, less 5%.

CLAUSE (4). It is agreed that we will not quote any other Jobber in the City of Chicago any better prices than our regular Jobber's prices. It is agreed that we will furnish you free of charge, such printed matter as we may issue from time to time, that may be necessary for the proper publicity of our product, and that all inquiries received from the City of Chicago, other than those from Jobbers will be referred to you for attention.

CLAUSE (5). Any violation by you of the terms of this agreement enables us to terminate this contract immediately upon notice in writing to that effect.

CLAUSE (6). The spirit of this contract is in the nature of a continual agreement, but may be cancelled by either party at the end of three months written notice.

Yours truly,

SEAMLESS STEEL BATHTUB COMPANY,

E. L. WAYMAN

Asst. Mgr

Accepted:—

REPUBLIC MFG. CO.

W. A. RATCLIFFE, *Prest.*

1

DEFENDANTS' EXHIBIT No. 20.

Filed April 20, 1911.

THIS AGREEMENT, Made in duplicate this day of by and between **the Seamless Steel Bathtub Co., a corporation organized and existing under the laws of the State of Michigan, *E. L. Wayman resident of the City of Pittsburgh of the State of Pennsylvania, (hereinafter called the "Licensor"), party of the first part, and.....

.....

2 .....

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH:

THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive class ( ) license to make and sell **Seamless Steel Bathtubs, *Sanitary Iron Enameled Ware* under the following United States Letters Patents, to wit:

3 upon the terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

4 The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non exclusive license to practice in the manufacture of **Seamless Steel Bathtubs, *Sanitary Iron Enameled Ware* the processes patented in said several Patents, to make and use in such

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

manufacture the machines and devices patented in said 1
Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

The Licensee shall pay the following royalties for license herein granted, to wit: —% of the net selling prices as established by the Licensor, **the net amount of royalties with all rebates deducted, as hereinafter provided for, not to be less than twenty five thousand (25,000) dollars for the first year, and not less than forty thousand (40,000) dollars per annum for each succeeding year during the life of this contract.**** 2

The Licensee shall on or before the 20th day of July, October, January and April, of each year during the term of this contract render to the Licensor a sworn statement in writing showing the number and description of goods made hereunder, sold and invoiced by the Licensee during the quarter then last past, and shall pay the royalties as above provided for each quarter on or before the 30th day of each of said months in each year. The books of account of the Licensee shall be open to inspection at all reasonable 3
times, of an accountant appointed by the Licensor, for the purpose of verifying the statements rendered under this agreement.

All terms, conditions, regulations and prices covered by this agreement now established by the Licensor and set forth in Schedules attached to and made part hereof shall be in force and effect until other terms, conditions, regulations or prices are substituted therefor by the Licensor, which substitution it is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, 4
regulations and prices as may be established by the Licensor from time to time, **the licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the product.*

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

1 **If at the end of the third quarter of the first year, (said year beginning) it shall appear that the Licensee has during the first quarter complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder with the following rebates from the royalties paid for said license for said first quarter's sales, to wit, 2-1/2% of the net selling prices (as establisheed by the Licensor), at which the goods were sold.**

At the termination of each succeeding quarter of the said license, if it shall appear that the Licensee has fully complied with all the terms of this agreement during the second preceding quarter, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee for sales made
2 **during the second preceding quarter.**

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any quarter the Licensor may withhold any and all unpaid rebates, and declare the same forfeited as penalty for said violation and shall at once notify the Licensee to that effect.**

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to customers of any other Licensee under a similar license, **or customers of the Licensor.*

3 The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents, or any of them. The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and license from all non-
4 licensed parties using any of said machines, processes or devices, or from any sale infringing said patents by customers or any such parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

license shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not thereafter be estopped to deny the validity of said Patents or any of them. 1

No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a **visible position on all goods made hereunder and sold by the Licensee.****

The Licensor shall give the Licensee the benefit of all further patents it may secure pertaining to, or such improvements it may make in the manufacture of Seamless Steel Bathtubs, without additional cost to the Licensee. The Licensee shall give the Licensor the same privileges without cost, should they come into possession, or have knowledge of, **all further patents and improvements in the manufacture of Seamless Steel Bathtubs.**** 2

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further terms of five years on conditions not less favorable than herein expressed. 3

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written. 4

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** Matter printed in black stricken out in original.

1

DEFENDANTS' EXHIBIT No. 21.

Filed April 20, 1911.

Co-operative Selling and Purchasing Contract

with

SEAMLESS STEEL BATHTUB COMPANY
Detroit Michigan

Manufacturers of

"SANISTEEL" Porcelained Baths.

2

THIS AGREEMENT, made this day of 190 , between the Seamless Steel Bathtub Company, a corporation organized and existing under the laws of the State of Michigan, party of the First (hereinafter called the "Company"), and of State of party of the Second part, (hereinafter called the "Purchaser"):

WITNESSETH:

THAT WHEREAS, the Company controls or is licensed under the following United States Letters Patent, relating to
3 Sanisteel Steel Bathtubs and processes and apparatus used in the manufacture thereof, to wit:

Number	Date	Inventor	Description

4

THAT WHEREAS, the Company is therefore interested in maintaining the value of these letters patent, it is willing to offer the Purchaser the benefit of the Co-operative Selling and Purchasing Plan outlined herein;

AND WHEREAS, the Purchaser desires to purchase from the Company as Licensee under said Letters Patent, Sanisteel Steel Baths for the purpose of selling to others, and the Company is willing to sell Sanisteel Steel Baths to the Purchaser for that purpose;

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is agreed as follows: 1

1. The Company agrees to sell, and the Purchaser agrees to take and pay for, Sanisteel Porcelained Baths at the following prices:

Class A Grade A Guaranteed Baths (Porcelained inside only)

5′ 3″ Roll Rim "Lazarre" Baths List Price $27.00
5-1/2′ 3″ " " "Iole" " " " 30.75

Discounts: Less Carloads 30 and 5%. Carloads 30 and 10% 2

Class A Competition Baths (Porcelained inside only)

5′ 3″ Roll Rim Bath List Price $27.00
5-1/2′ " " " " " 30.75

Discounts: Less Carload 30 and 10% Carload 30 and 10 and 5%

Single Crates for holding one Bath 50 cents net
Combination Crates for holding two Baths 75 cents net

Prices fob cars Detroit, subject to freight allowances and equalizations as given in printed Price List of Company dated 3

Class AA Grade A Baths (Porcelained both sides)

5′ 3″ Roll Rim "Queen" Baths List $90.00
5-1/2′ 3″ " " "Princess" " " 105.00

Discounts: Lots of 1 to 12 inclusive Discount 60-10%
Lots of 13 to 24 inclusive " 60-10-5%
Lots of 25 to 49 inclusive " 66-2/3%
Lots of 50 to carload (80) " 66-2/3-5%

Boxing $2.00 extra net.
Prices fob Cars Detroit with no freight allowance. 4
Extra charges for all baths drilled "special".

Bell Supply .....$1.00 net
Overflow only ..... 1.00 "
Cock Holes etc 1.00
Hole in Rim ..... .25

2. The Purchaser shall observe and strictly maintain the "resale" selling prices as follows:

Class A Grade A Guaranteed Baths

1 Discounts: Lots 1 to 12 inclusive Discount 20%
13 to 24 " " 20-5%
25 to 49 " " 20-10%
50 to carload (120) " 30-5%

Class A Competition Baths

Discounts: Lots 1 to 12 inclusive Discount 20-5%
13 to 24 " " 20-10%
25 to 49 " " 20-10-5%
50 to carload (120) " 30-10%

Single Crates for holding one Bath 50 cents net
2 Combination Crates for holding two Baths 75 cents net
Prices fob cars Detroit, subject to Freight allowances and equalizations as given in printed Price List of Company dated

Grade A Class AA Baths

Discounts: Lots of 1 to 6 inclusive Discounts 50-10%
7 to 12 " 60%
13 to 20 " 60-5%
21-30 60-10%
31 to carload (80 baths) 66-2/3%

3 Boxing $2.00 extra net
Prices fob cars Detroit with no freight allowance.

Extra charge for all Baths drilled "special"

Bell Supply	$1.00	net
Overflow only	1.00	"
Cock-Holes other than 3-3/8" between centers	1.00	"
	.25	"

3. It is understood that the "resale" Prices maintained in this agreement and the price list attached cover only the
4 value of the product as furnished by the Company, and that no extra parts are to be furnished the Purchaser's customers without making an extra charge for same at market prices. In the event of it being necessary to advance resale prices the Purchaser agrees to adopt such advanced schedule of selling prices immediately upon notice from the Company that advanced resale prices become effective. Within 5 days of the Company's request in writing, the Purchaser agrees to advise the Company definitely whether it has or has not sold or offered to sell any product pur-

chased in this agreement, at lower prices or on more favorable conditions of sale than those established by the Company. 1

4. The Company guarantees its "First grade guaranteed ware", bearing its Blue and Gold Guarantee Label, for a period of 5 years from date of sale, against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge", which means that *in addition to replacing the goods, we will re-imburse the Purchaser for Freight Charges, Cartage, cost of labor in taking out and installing "the replacing" fixtures as well as decorating charges, if they have been incurred.* 2

5. The Company guarantees its "Competition" (Second grade Baths showing minor defects in workmanship and *not* bearing our Guarantee Label) for a period of *one* year from date of sale against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the Porcelain Enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge", which means *that in addition* to replacing the goods, *we will re-imburse the purchaser for Freight and Cartage Charges,* but *will not be responsible* for any other charges in connection with "replacing". 3

6. The Company agrees to inaugurate a general publcity campaign to the consuming public, architects, plumbers etc., and to furnish the Purchaser, free of charge, such printed matter as the Company may issue from time to time, that may be necessary for the proper publicity of its product. 4

7. In consideration of the Purchaser carrying a proper stock to meet the demand created by the Company, the Company agrees to allow the Purchaser to return at the purchase price any goods not disposed of within 6 months from date of shipment by the Company, provided they do not contain defects other than inherent defects arising from defective workmanship or material.

DEFENDANTS' EXHIBIT No. 22.

Filed April 20, 1911.

We, the undersigned, manufacturers of enameled sanitary iron ware, hereby agree to form an Association to be known as "The Sanitary Enameled Ware Association". Said Association is formed and is to be governed along the lines of a report on resolutions and by-laws presented by a Committee selected and empowered for such purpose. The said report and its conditions are hereto attached and are a part of this agreement and are not subject to changes excepting such variation as the wisdom of the Body may from time to time, by a majority vote, decide.

Witness the signatures of the parties hereto in the presence of each other or in the presence of witnesses, the latter provision being made for such members as are not here present today.

Dated Pittsburgh, Pa., August 4th, 1909.

Blairsville Enameled Ware Co
F. D. Cook Prest

Standard Sanitary Mfg Co
by Francis J. Torrance, V. P.

Union Sanitary Mfg Co.
C E Gates.

L. Wolff Mfg Co
H. M. Hoelscher Asst Secy

The Humphryes Mfg Co
by D A Carpenter

United States Sanitary Mfg Co
A H Cline Jr Sec'y

Wheeling Enameled Iron Co
by J E Wright Prest

Clymer Mfg Co
W. A. Guthrie Pres

The Cahill Iron Works
By F. H. Caldwell Prest.

National Sanitary Mfg Co
F G Borden Pres.

J. M. Kohler Sons Co
Walter J. Kohler
Pres.

The McCrum-Howell Co
Howard T. Gates
Secretary

The J. L. Mott Iron Works.
John Reid
Treasurer.

The Day Ward Co
By A G Ward

Colwell Lead Co.
J. T. Duryea.

A. Weiskittel & Son Co
By Anton Weiskittel

McVay & Walker
Alex. C Walker

The Barnes Mfg. Co.
T R Barnes
Scty & Gen Mgr

Iron City Sanitary Mfg Co
J A Kelly Secy & Treas

The Object of the Association. 1

Resolved:—that the manufacturers of enameled ware here assembled form "An Association of Manufacturers of Enameled Ware" with the object of general benefit and improvement of the business in which the several Concerns are engaged.

#1. The regulation of sizes of various styles and patterns of wares.

2. Uniformity in catalogue or list prices for similar goods. 2

3. Uniformity in delivery points, keeping in mind the rights of the jobbers as to competition among themselves.

4. Protection as to freight classification and freight rates on the products of the members of the Association.

5. A general uniformity in the conduct of the business with at all times due regard for the interests of the parties hereto and proper and just respect for the law.

6. The Association is not formed to control or regulate prices of goods manufactured by its members.

3

The name of the Association shall be "The Sanitary Enameled Ware Association."

The officers shall be President, Treasurer, and Secretary with an Executive Committee of five, all of whom shall be actively engaged in the manufacture of Enameled Ware.

A commissioner or Actuary shall be employed at a stated salary. His duties will be specified by the Executive Committee and their actions shall be passed upon by the Association at its regular or special meetings.

All officers and the Executive Committee shall be elected by ballot. 4

The meetings of the Association shall be held on the first Wednesday of August, October, December, February, April and June.

The Executive Committee shall meet monthly at such time and place as it may elect. The members of the Executive Committee shall be allowed their respective railroad fare and sleeping-car fare incident to their attendance at the meetings of their Committee.

Of the five members selected at this meeting, the three

1 receiving the highest number of votes shall serve for two years from date thereof and the two receiving the lowest number of votes shall hold office for one year and at the next annual meeting two members shall be elected to this Committee and at the second annual meeting, the three members shall be elected. This paragraph is not to be construed to prevent the election of any member at the expiration of his term.

In the interim of Association meetings, the Executive Committee shall have full power to transact the business of the Association but shall take no action that would be in-
2 consistent with the rights and interests of the Association or that would render void previous acts of the Association.

The expenses of the conduct of the Association shall be provided for by an assessment made upon and collected from the members. The rate or proportion shall be fixed by the Executive Committee and as nearly as possible be in proportion to the volume of enameled iron business of the several members.

One vote shall be accredited to each Concern member of the Association but any firm or corporation may be represented by as many of their concern at any regular or
3 special meeting as they desire.

4

DEFENDANTS' EXHIBIT No. 23. 1

Filed April 21, 1911.

ST CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., April 29, 1910

Mr. W. A. Myler,
Pittsburgh, Pa.

My dear Sir.

Mr. E. L. Wayman was in to see about a subject we had often discussed while associated with the Seamless Steel Bath Tub Company, namely, all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware, as I understand it he has negotiated far enough along, so that now it becomes a question of money to carry out his plan. It is my disposition to help him both financially and otherwise as our relations have been such that a brotherly feeling exists between us. On account of my experience and negotiations in Seamless & Real Estate I have used up the limit of my credit at our local Bank till I begin to realize on properties and securities I own. Consequently, I cannot borrow on collateral, even which ordinarily they would accept from me or any of their customers. Therefor in order to assist Mr. Wayman I would like to deposit with you certain stock collateral namely, Universal Electric Welding Co. of New York. Certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75.00 per share and will increase as Mr. Wayman is aware of, on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises, you will be doing him a favor, without risk to yourself, which I will very much appreciate and hope to be able to reciprocate at some future period.

2

3

4

Awaiting your decision

Believe me, Most sincerely

EUGENE H. SLOMAN.

1

DEFENDANTS' EXHIBIT No. 24.

Filed April 21, 1911.

ST CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., April 29th, 1910

Received of Eugene H. Sloman Certificate No. 1030 for 300 Shares of Universal Electric Welding Co's Stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan
2 as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date.

E. L. WAYMAN.

DEFENDANTS' EXHIBIT No. 25.

Filed April 21, 1911.

(Endorsed on back of foregoing.)

April 29th, 1910.

I hereby agree and consent that the value at present
3 of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date.

E. L. WAYMAN.

DEFENDANTS' EXHIBIT No. 26.

Filed April 21, 1911.

STANDARD SANITARY MFG. CO.

Pittsburgh, U. S. A. May 2, 1910

Mr. Eugene H. Sloman,
4 Detroit, Mich.

Dear Sir:

Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satsfactory as per your letter.

Yours truly,

W. A. MYLER.

DEFENDANTS' EXHIBIT No. 27. 1

Filed April 21, 1911.

ST. CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., Aug. 20th, 1910.

Mr. W. A. Myler
Pittsburgh, Pa

Dear Mr. Myler—

Enclosed herewith I am enclosing to you Certificate D230 for 100 Shares of Standard Sanitary Mfg Co's Stock upon which my loan here in Detroit was negotiated, which I have paid today in full, Mr. Sloman being with me and he requests at your early convenience, that you return to him the certificate for 300 shares of the Universal Electric Welding Co's Stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own. 2

With kindest regards, I am

Yours truly
E. L. WAYMAN. 3

P.S For safety I am sending this via Express.

4

1 **DEFENDANTS' EXHIBIT No. 28.**

Filed May 8th, 1911.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5311001-I
May 31st, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
New York, N. Y.

2 Dear Sir:—

Beginning tomorrow, will you kindly keep a record of your Furnaces in operation? The latter part of the week, I will send you printed forms to keep these records on, which are to be forwarded to me monthly.

Yours very truly,

E. L. WAYMAN,
Licensor.

Copies sent
to Mr. Ahrens—Louisville
" Mr. Dawes—Pittsb

3

DEFENDANTS' EXHIBIT No. 29.

Filed May 8th, 1911.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6131007-I
June 13th, 1910.

To the Licensees:

4 In order that there may be no misunderstanding, I wish to advise you that it is not the intention to confine the execution of the Jobbers' License Agreement to the list of names given in the Blue List. All firms, that do a Jobbing business, are entitled to buy goods provided the individual Manufacturers desire to sell them, if they will execute this contract.

Yours very truly,

Licensor.

COLWELL LEAD COMPANY EXHIBIT No. 1. 1

Filed April 17th, 1911.

D-41312-W

STANDARD SANITARY MFG. CO.

Pittsburgh, U. S. A. Apr. 13/09

Mr. B. O. Tilden, President,
American Sanitary Works,
New York, N. Y.

Dear Sir: 2

In answer to your favor of the 10th inst. would state that the license that we have given for the use of our pneumatic dredge was $1.00 per furnace per day while the furnace is in operation. In other words, if you have ten furnaces on which you are using the pneumatic dredges, it would cost you $10.00 a day. Credit would be allowed for a furnace out of operation for a week or greater length of time, simply for a furnace to be shut down for a day or two there would be no credit.

Yours truly,

E. L. DAWES, 3
Mgr.

Received Apr 14 1909 Am. Sanitary Wks. N. Y. Office.

4